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Public Lands: Interior

Item # 572-C

43

COMPLETED

PARTS 1000 TO 3999

Revised as of October 1, 1981

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Public Lands: Interior

43

PARTS 1000 TO 3999

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JOHN E. BYRNE,
Director,
Office of the Federal Register.

October 1, 1981.

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Title 43—PUBLIC LANDS: INTERIOR is composed of three volumes. Volume one (Parts 1-999) contains all current regulations issued under Subtitle A—Office of the Secretary of the Interior and Chapter I—Bureau of Reclamation, Department of the Interior. Volume two (Parts 1000 to 3999) and volume three (Parts 4000 to end) include all regulations issued under Chapter II—Bureau of Land Management, Department of the Interior. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 1981.

In the third volume, a table of Public Land Orders follows Chapter II, and a subject index and redesignation tables appear in the Finding Aids section.

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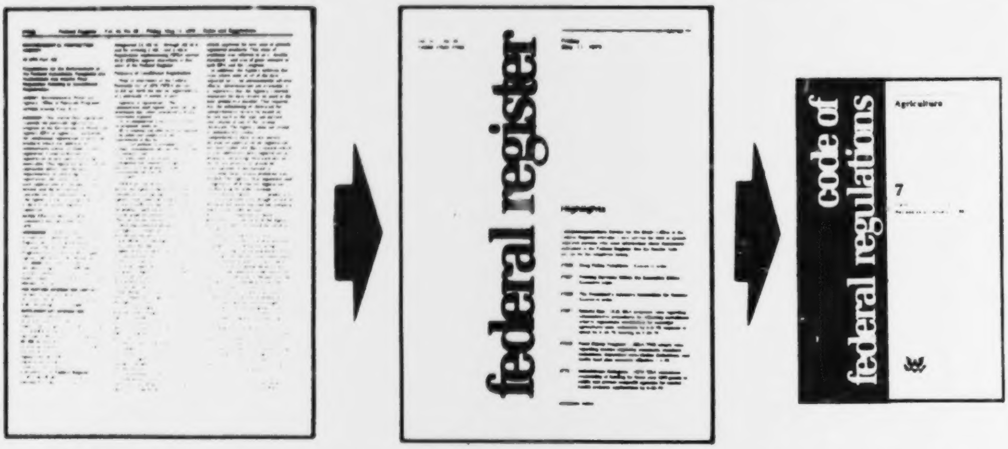

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AUTHORITY: 43 U.S.C. 1740.

SOURCE: 44 FR 46392, Aug. 17, 1979, unless otherwise noted.

§ 1601.0–1 Purpose.

The purposes of this subpart are (a) to establish in regulations a process for the development, approval, maintenance, amendment and revision of resource management plans for public lands administered by the Bureau of Land Management and (b) to set forth how existing plans or other data will be used until plans are developed under these regulations.

§ 1601.0–2 Objectives.

The objective of this subpart is to improve resource management decisions on public lands through a process of resource management planning that includes participation by the public and Federal, State and local governments, maximizing use of the best available data, and analysis of alternatives. Resource management plans are designed to guide and control future management actions and the development of subsequent more detailed and limited scope plans for resources and uses.

§ 1601.0–3 Authority.

These regulations are issued under the authority of sections 201 and 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711-1712); section 3 of the Federal Coal Leasing Amendments Act of 1976 [30 U.S.C. 201(a)]; sections 522, 601, and 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.); and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

§ 1601.0-4 Responsibilities.

(a) National level policy and procedure guidance for planning shall be provided by the Secretary and the Director. The Director may assume approval responsibility for a specific plan and related environmental impact statement if it is deemend necessary.

(b) State Directors shall provide quality control for planning and related environmental impact statements and shall provide additional guidance, as necessary, for use by District Managers. State Directors shall file draft and final environmental impact statements associated with resource management plans and amendments.

(c) Resource Management plans, amendments, revisions, and related environmental impact statements shall be prepared by District Managers, and reviewed and concurred in by State Directors. Resource management plans, amendments and revisions are then approved by District Managers.

(d) Depending on the subject matter involved, the appropriate Bureau of Land Management official shall coordinate with other Federal agencies, State and local governments and Indian tribes.

§ 1601.0-5 Definitions.

As used in this subpart:

(a) "Applicant proposed action" means any resource use or development or management action proposed to the Bureau of Land Management by a member of the public or by another agency (not exclusively generated by the Bureau of Land Management) through any procedure established by regulations including nominations, petitions, and applications.

(b) "Areas of critical environmental concern" (ACEC) means areas within the public lands where special managment attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards. The identification of a potential ACEC shall not, of itself, change or prevent change of the management or use of public lands.

(c) "Conformity of conformance" means that a resource use or management action shall be specifically provided for in the plan, or if not so mentioned shall be clearly consistent with the terms, conditions, and decisions of the approved plan or plan amendment.

(d) "District manager" means the Bureau of Land Management line official in charge of a resource managing field office reporting to a State Director. In some cases (e.g., Eastern States) these officials may not be titled District Manager.

(e) "Goal" means the desired state or condition that a resouce management policy or program is designed to achieve. A goal is usually not quantifiable and may not have a specific date by which it is to be completed. Goals are the base from which objectives are developed.

(f) "Guidance" means any type of written communication or instruction which transmits objectives, goals, constraints or any other direction which helps the District Manager and staff know how to prepare a specific resource management plan.

(g) "Local government" means any political subdivision of the State and any general purpose unit of local government with resource planning, resource management, zoning, or land use regulation authority.

(h) "Objectives" means planned results to be achieved within a stated time period. Objectives are subordinate to goals, are narrower and shorter in range, and have increased possibility of attainment. Time periods for completion, and outputs or achievement that are measurable and quantifiable, are specified.

(i) "Public" means affected or interested individuals, including consumer organizations, public land resource users, corporations and other busines entities, environmental organizations, and other special interest groups and officials of State, local, and Indian tribal governments.

(j) "Public lands" means any land or interest in land owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts, and Eskimos.

(k) "Resource and resource management" is defined in the broadest sense and includes all public land values, renewable and non-renewable resouces of all types, supporting services such as fire control and cadastral survey, land use authorization and control, and land disposition, exchange or acquisition.

(l) "Resource area" means a geographic portion of a Bureau of Land Management district, under the supervision of an area manager. It is the smallest administrative subdivision in the Bureau and is, in most instances, the area for which resource management plans are prepared and maintained.

(m) "Resource management plan" means a land use plan as prescribed by the Federal Land Policy and Management Act. The resource management plan establishes in a written document—

(1) Land areas for: limited, restrictive or exclusive use; designation, including ACEC designation; and transfer from Bureau of Land Management Administration;

(2) Allowable resource uses (either singly or in combination) and related levels of production or use to be maintained, including appropriate threshold levels;

(3) Resource condition goals and objectives to be attained;

(4) Program constraints and general management practices needed to achieve the above items;

(5) Need for and area to be covered by more detailed and specific plans;

(6) Support action necessary to achieve the above, including as a minimum:

(i) Resource protection, such as avoidance or mitigation of trespass, fire or insect damage,

(ii) The general transportation system required for legal and physical access,

(iii) General cadastral survey or property line identification, and

(iv) Withdrawals and other realty action;

(7) General implementation sequences, where carrying out a planned action is dependent upon prior accomplishment of another planned action; and

(8) Intervals and standards for monitoring and evaluating the plan to determine the effectiveness of the plan and the need for amendment or revision.

A resource management plan is not a final implementation decision on actions which require further specific plans, process steps or decisions under specific provisions of law and regulations.

(n) "Capability" means the ability or potential of a unit of land to produce resources, supply goods and services or allow resource uses under a set of management practices at a given level of management intensity without permanently impairing the resource involved. Capability depends upon a fixed set of conditions which are relatively stable over time, including, but not limited to, climate, slope, landform, soils and geology. Most land has an inherent capability to produce one or more resources, or goods and services, or allow resource uses, under natural conditions. Capability analyses shall permit identification of specific uses or management practices that cannot be allowed on specific land areas due to physical conditions.

(o) "Threshold levels" are specific defined levels of resource use, production or development which are established as maximum or minimum constraints in the resource management plan. They are established for defined geographic areas but are not site specific. For example, they may include a maximum or minimum level of winter wildlife habitat which is to be maintained or tonnage of coal that could be made available over a specified time period. Threshold levels are usually established to ensure that the plan does not permit an unacceptable level of cumulative impacts.

(p) "Threshold analysis" is the process of comparing possible threshold levels to anticipated cumulative impacts and establishing that point where an additional increment in the threshold will make a major change in impact.

§ 1601.0-6 Environmental Impact Statement Policy.

Approval of a resource management plan is considered a major Federal action significantly affecting the quality of the human environment. The environmental analysis of alternatives and the proposed plan shall be accomplished as part of the resource management planning process. The proposed plan and related environmental impact statement shall be published as a single document.

§ 1601.0-7 Scope.

(a) These regulations apply to all BLM administered public lands, including any public land area subject to acts of Congress such as the Wild and Scenic Rivers Act, the O&C Act of 1937, National Trails System Act, the Wilderness Act, and national recreation areas acts, and other similar statutes specifically designating lands for particular uses.

(b) These regulations also govern the preparation of resource management plans when the only public land interest is the mineral estate. Since the use planned for the federally-owned minerals could have a major impact on the nonpublic land surface, the views and concerns of owners of the surface shall be obtained and considered.

§ 1601.0-8 Principles.

The preparation, amendment and revision of resource management plans shall be consistent with the following principles:

(a) The principles of multiple use and sustained yield set forth in the Federal Land Policy and Management Act and other applicable laws shall be adhered to;

(b) A systematic interdisciplinary approach shall be used to achieve intergrated consideration of physical, biological, economic, social and other sciences, and the environmental design arts;

(c) Priority shall be given to the identification, designation, protection and special management of ACEC's;

(d) The relative significance of the public land products, services, and uses to local economies shall be considered;

(e) To the extent it is available, the inventory of the public lands, their resources, and other values shall be relied upon;

(f) Present and potential uses of the public lands shall be considered;

(g) Impact on uses of adjacent or nearby non-Federal lands and on non-public land surface over federally-owned minerals shall be considered;

(h) The relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values shall be considered;

(i) Long term benefits and detriments to the public shall be weighed against short term benefits and detriments;

(j) Compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans shall be provided for;

(k) To the extent consistent with the laws governing the administration of the public lands, the resource inventory, planning, and management activities of or for such lands shall be coordinated with the resource planning and management programs of other Federal departments and agencies, States and local governments, and Indian tribes; and

(l) The public shall be provided with early notice and frequent opportunity to participate in and comment on the preparation of plans and related guidance.

§ 1601.1 Resource Management Planning—General.

§ 1601.1-1 Guidance for planning.

Guidance for preparation and amendment of resource management plans shall be provided, as needed, by the Director and State Director. Such guidance shall be limited to the following items which shall be in writing and available for public review in State and District offices.

(a) National level policy which has been established through legislation, regulations, executive orders or other Presidential, Secretarial or Director approved documents. This policy may include appropriately developed resource management commitments, such as a right-of-way corridor crossing several resource areas.

(b) Guidance which has been developed at the State Director level, with necessary and appropriate governmental coordination as prescribed by § 1601.4 of this title, to indicate specific goals, objectives, priorities, alternatives, values, constraints or other items which are to be considered in the resource management process in the State. As relevant, this guidance shall be reflected or incorporated in the planning process actions required by §§ 1601.5-1 through 1601.5-9 of this title and shall be subject, through those processes, to the public review and discussion prescribed by § 1601.3 of this title and the environmental analysis prescribed by § 1601.5-6 of this title. Such guidance shall be reconsidered by the State Director at any time during the planning process if it is found, through public involvement or other means, to be inappropriate when applied to the resource values and conditions found in a specific area being planned. Such change shall not violate national policy.

(c) Procedures which shall be used to implement these regulations.

(d) Schedules, budgets and organizational coordination requirements.

§ 1601.1-2 Planning area.

Resource management plans shall be prepared and maintained for resource areas. If an individual resource area is not an appropriate area for a resource management plan, the Director may authorize a more appropriate planning area.

§ 1601.1-3 Interdisciplinary approach.

An interdisciplinary approach, including the use of an interdisciplinary team at each step of the planning process as prescribed under §§ 1601.5-1 through 1601.5-9 of this title, shall be used in the preparation, amendment and revision of resource management plans to ensure the integrated use of the natural and social sciences and the environmental design arts. The disciplines of the preparers shall be appropriate to the values involved and the issues identified during the issue identification and environmental impact statement scoping stage of the planning process. The District Manager shall use whatever combination of BLM staff, consultants, contractors, other governmental personnel and advisors as necessary to achieve this objective.

§ 1601.3 Public participation.

(a) The Director shall, early in each fiscal year, publish a planning schedule which shall advise the public of the status of each plan in process or to be started during that fiscal year, the major action on each plan during that fiscal year and projected new planning starts for the 3 succeeding fiscal years. The notice shall call for comments on planning priorities for those 3 fiscal years so that such comments can be considered in refining priorities for those years.

(b) Public participation shall be sought and used throughout the preparation, amendment or revision of resource management plans. (See additional provisions for governmental coordination in § 1601.4 of this title.)

(c) A public participation plan shall be prepared to guide public involvement in the preparation, amendment or revision of each resource management plan. The public participation plan shall be initiated prior to the issue identification stage of the planning process and shall be updated thereafter as necessary.

(d) The purpose of public participation is to—

(1) Inform the public of Bureau of Land Management resource management planning activities;

(2) Provide the public with an understanding of Bureau of Land Management programs and proposed actions;

(3) Ensure the public needs and concerns are understood by the Bureau of Land Management; and

(4) Broaden the information base upon which resource management planning decisions are made.

(e) Public notice and opportunity for participation in specific resource management plan preparation is mandated at 5 specific points in the planning process:

(1) General notice at the outset of the process which invites participation

in the identification of issues (see §§ 1601.3(g) and 1601.5-1);

(2) A notice inviting comment on the planning criteria (see § 1601.5-2);

(3) Publication of the draft plan and draft environmental impact statement;

(4) Publication of the final plan and final environmental impact statement which triggers the opportunity for protest (see §§ 1601.5-8 and 1601.6-1(c)); and

(5) Public notice and comment on any significant change made to the plan as a result of action on a protest. Additional public involvement shall be provided as appropriate and as guided by the public participation plan.

(f) Public participation activities and means of notification shall be appropriate to the areas and people involved, and the stage of planning (preparation, amendment or revision). Public participation activities may include requests for written comments, surveys, meetings, hearings, conferences, seminars, workshops, tours, and similar events scheduled and held to foster public reactions and suggestions.

(g) Upon starting the preparation amendment or revision of resource management plans, public participation shall be initiated by a notice published in the FEDERAL REGISTER and appropriate media, including newspapers of general circulation in the State, adjoining States where it is deemed appropriate, and the District. The notice shall include the following information:

(1) Description of the proposed planning action;

(2) Identification of the geographic area to be planned;

(3) The general types of issues anticipated;

(4) The disciplines to be represented on the interdisciplinary team;

(5) The kind and extent of public participation activities to be provided;

(6) The times, dates, and locations scheduled or anticipated for any needed public meetings, hearings, conferences or other gatherings, as known at that time;

(7) The name, title, address, and telephone number of the Bureau of Land Management offical who may be contacted for further information; and

(8) The location and availability of documents relevant to the planning process.

(h) Public participation in the preparation of a draft environmental impact statement shall begin with the publication of a notice of intent in the FEDERAL REGISTER which is the notice described in paragraph (g) of this section. After this publication, public participation opportunities for planning and those required by the National Environmental Policy Act, shall be provided simultaneously.

(i) At least 15 days' public notice shall be given for public participation activities where the public is invited to attend a meeting of some sort. Any notice requesting written comments shall provide for at least 30 calendar days for response. Ninety days shall be provided for review of the draft plan and draft environmental impact statement.

(j) A list of individuals and groups known to be interested in or affected by a resource management plan shall be maintained by the District Manager. Individuals or groups may ask to be placed on this list. All individuals and groups on this list shall be notified of public participation activities.

(k) The responsible Bureau of Land Management official or his or her representative shall attend all Bureau of Land Management scheduled and conducted public participation activities.

(l) All Bureau of Land Management scheduled public participation activities shall be documented by a summary of the principal issues discussed, comments made, and a register of those in attendance. The summary shall be available for public review and open for addition of comment by any participant who wishes to clarify or add to views he or she expressed.

(m) Copies of an approved resource management plan and amendments shall be reasonably available for public review. This includes copies at the State Office for that district, that District Manager's Office, and district offices contiguous to that district, detached area offices in that district, and those detached area offices in other districts that are contiguous to that district, and at least one additional location determined by the District

Manager which offers convenient access to the public. Plans, amendments and revisions shall be published and single copies shall be available to the public on request.

(n) Supporting documents to plans shall be available for public review at the office where the plan was developed.

(o) Fees for reproducing requested documents beyond those used as part of public participation activities and other than the single copies of the printed plan, amendment or revision, may be charged according to the Bureau of Land Management schedule for Freedom of Information Act requests in 43 CFR Part 2.

(p) When resource management plans involve areas of potential mining for coal, by means other than underground mining, and the surface is private, the Bureau of Land Management shall consult with all surface owners who (1) hold legal or equitable title to the land surface, and (2) have their principal place of residence on the land or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface mining operations; or receive directly a significant portion of their income, if any, from such farming or ranching operations. This contact shall be made after the review in the planning process which assesses whether there are areas unsuitable for coal leasing to avoid contacting owners where the land would not be considered for coal leasing based on unsuitablility criteria specified in § 3461.2 of this title. Contact shall be made in time to fully consider the owner's views. This contact may be made by mail or in person by the District Manager or his or her representative. A period of at least 30 days from the time of contact shall be provided for the surface owners to provide their preference to the District Manager. Such surface owners preferences shall be considered as specified in § 3420.2-3 of this title.

(q) If the plan involves potential for coal leasing, a public hearing shall be provided prior to the approval of the plan if requested by any person having an interest which is, or may be, adversely affected by implementation of such plan. The hearing shall be conducted as prescribed in § 3420.2-4 of this title and may be combined with a regularly scheduled public meeting.

§ 1601.4 Coordination with other Federal agencies, State and local governments, and Indian tribes.

In addition to the public involvement prescribed by § 1601.3 of this title the following coordination is to be accomplished with other Federal agencies, State and local governments, and Indian tribes. The objectives of the coordination are for State Directors and District Managers to keep apprised of non-Bureau of Land Management plans; assure that consideration is given to those plans that are germane in the development of resource management plans for public lands; assist in resolving, to the extent practicable, inconsistencies between Federal and non-Federal government plans; and provide for meaningful public involvement of other Federal agencies, State and local government officials, both elected and appointed, and Indian tribes in the development of resource management plans, including early public notice of proposed decisions which may have a significant impact on non-Federal lands.

§ 1601.4-1 Coordination by the State Director.

State Directors' coordination shall include the following:

(a) State Directors shall coordinate with and seek advice from Federal agencies, State governments, and Indian tribes, to understand and consider their needs and concerns.

(b) To facilitate coordination with State government, State Directors shall seek written agreements with Governors or their designated representatives on procedural topics such as exchanging information, providing advice and participation, and time frames for receiving State government participation and review in a timely fashion. If an agreement is not reached the State Director shall provide opportunity for Governor and State agency review, advice, and suggestions on issues and topics that the State Director has reason to believe could affect or influence State government programs.

(c) Before issuing guidance to District Managers, in compliance with § 1601.1-1 of this title, the State Director shall:

(1) Ensure that it is as consistent as possible with existing officially adopted and approved resource related policies, plans or programs of other Federal agencies, State agencies and Indian tribes, and any local governments that may be affected, as prescribed by § 1601.4-3 of this title; and

(2) Identify areas where the proposed guidance is inconsistent with such policies, plans or programs and provide reasons why the inconsistency exists and cannot be remedied; and

(3) Notify the other Federal agencies, State agencies or Indian tribes with whom consistency is not achieved and indicate any appropriate methods, procedures, actions and/or programs which may lead to resolution of such inconsistencies.

§ 1601.4-2 Coordination by the District Manager.

District Manager's coordination shall include the following:

(a) The District Manager shall submit a notice of intent to prepare, amend or revise a resource management plan along with a general schedule of anticipated planning steps to the State Clearinghouse (OMB Circular A-95) for circulation among State agencies. This notice shall also be mailed to (1) concerned Federal agencies that have requested such notices, or that the District Manager has reason to believe would be concerned with the plan, (2) all Tribal Chairmen or Alaska Native Leaders to the extent Indian Reservations, Alaska Native Regional Corporations or Village Corporations are impacted, (3) the heads of county boards for the counties that are involved as well as the heads of any other local government units having zoning or other land use regulatory jurisdiction in the geographical area within which the public lands are located, (4) designated areawide clearinghouses, and (5) any other State or local government agencies which ask to be placed on such a mailing list. These notices shall be issued simultaneously with the public notices required under § 1601.3(g) of this title.

(b) Early data exchange, consultation, and coordination are encouraged to avoid duplication of data collected and to improve the information base for planning.

(c) Resource management plans shall be coordinated with other Federal agencies, State and local governments and Indian tribes. The plans shall be made as consistent as practicable with officially approved and adopted resource related policies, plans and programs of other Federal agencies, State and local governments and Indian tribes as prescribed in § 1601.4-3 of this title.

(d) Federal agencies, State and local governments, and Indian tribes shall have the time periods prescribed under § 1601.3(i) of this title for review and comment on resource management plan proposals. Should they notify the District Manager, in writing, of what they believe to be specific inconsistencies between the Bureau of Land Management resource management plan, and their plans, the resource management plan documentation shall show how those inconsistencies were addressed and if possible resolved.

(e) When an Advisory Council has been formed under section 309 of the Federal Land Policy and Management Act for the district in which the resource area is located, that council shall be informed and their views sought and considered throughout the resource management planning process.

§ 1601.4-3 Consistency requirements.

(a) Guidance and resource management plans shall be consistent with officially approved or adopted resource related plans of other Federal agencies, State and local governments and Indian tribes, so long as the guidance and resource management plans are also consistent with the purposes, policies and programs of Federal law and regulations applicable to public lands, including Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise and other pollution standards or implementation plans.

(b) Guidance and resource management plans shall, to the extent practicable be consistent with officially approved and adopted resource related policies and programs of other Federal agencies, State and local governments and Indian tribes to the extent provided in paragraph (a) of this section so long as the guidance and resource management plans are consistent with Secretarial policies and programs. It is the Department's intent to be as consistent as practicable with State and local governmental and Indian tribal policies and programs.

(c) State Directors and District Managers shall, to the extent practicable, keep apprised of State and local governmental and Indian tribal policies, plans and programs, but they shall not be accountable for ensuring consistency if they have not been notified, in writing, by State and local governments or Indian tribes of an apparent inconsistency.

(d) Where State and local government policies, plans and programs differ, that of higher authority will normally be followed.

§ 1601.5 Resource management planning process.

In the preparation, or revision of a resource management plan and in evaluating its impact, a process including the following systematic set of interrelated actions shall be used. Some actions may occur simultaneously and it may be necessary to repeat an action as additional information becomes available. The environmental analysis requirements of the National Environmetal Policy Act shall be included in this process.

§ 1601.5-1 Identification of issues.

At the outset of the planning process, the public, other Federal agencies, State and local governments and Indian tribes shall be given an opportunity to suggest concerns, needs and resource use, development and protection opportunities for consideration in the preparation of the resource management plan. The District Manager shall analyze those suggestions, plus available district records of resource conditions, trends, needs and problems, and select topics to be addressed as issues during the planning process. This action shall be repeated as necessary during the planning process to incorporate new information. This action, plus the development of planning criteria (§ 1601.5-2) shall also comply with the scoping process required by 40 CFR 1501.7.

§ 1601.5-2 Development of planning criteria.

(a) *Purpose and use of criteria.* The District Manager shall prepare criteria to guide development of the resource management plan, or revision, to insure that it is tailored to the issues previously identified and to insure that unnecessary data collection and analyses are avoided. Proposed planning criteria, including any significant changes, shall be published for public comment prior to being approved by the District Manager for use in the planning process. Planning criteria shall be written and included in the draft and final plan. Planning criteria shall guide the collection and use of inventory data and information, the analysis of the management situation, the design and formulation of alternatives, and the estimate of effects of alternatives. Planning criteria shall be used to evaluate alternatives and to select one alternative to serve as the proposed resource management plan. Planning criteria may need to be changed as planning proceeds, based on public suggestions and findings of the various studies and assessments. A written, publically available record shall be made of any significant change in the criteria.

(b) *Basis for criteria.* Generally, planning criteria shall be based on:

(1) Laws, executives orders, and regulations;

(2) The principles cited under § 1601.0-8 of these regulations;

(3) National and State Director guidance applicable to that resource area;

(4) The results of public participation and coordination with Federal agencies, State and local governments and Indian tribes;

(5) Analysis of data and information needs and related decision strategy in accordance with the following policy:

(i) Inventory data and other information collection shall be focused on that needed for topics to be addressed in the planning process; that needed to identify values which by legislation or national policy require special attention; and that needed to establish the condition and capability of the public land resource for consideration during both plan formulation and monitoring processes.

(ii) Inventory data and other information collection shall be pursued to the greatest extent possible within the constraints of budgets provided for such collection.

(iii) When time and funds for inventory data and other information collection are limited, and in developing budget proposals, priority shall be given to information and inventory data collection related to potential decisions with greatest impact and to which additional information and data would make the greatest difference.

(iv) When circumstances require that a planning decision be made, but there is insufficient inventory data or other information, the decision shall preserve future resource options and avoid irreversible commitments to the degree practicable. The plan and environmental impact statement documentation shall include a worst case analysis (see 40 CFR 1502.22) and an indication of the probability or improbability of its occurrence. The monitoring and evaluation standards and intervals prescribed by the plan shall be designed to minimize the risk of unacceptable results from plan implementation.

§ 1601.5-3 Inventory data and information collection.

The District Manager shall arrange for resource, environmental, social, economic, and institutional data and information to be collected, or assembled if already available, with pertinent maps, graphic material, and explanatory aids, as prescribed by planning criteria. Inventory data and information needs may vary as issues develop or change during the planning process.

§ 1601.5-4 Analysis of the management situation.

(a) The District manager shall analyze the management situation to determine the capability of the public land resources to respond to: Needs, concerns and opportunities identified through public participation and coordination with Federal agencies, State and local governments and Indian tribes; issues defined earlier in the planning process; and national and State Director guidance. Factors to consider may include, but are not limited to—

(1) The types of resource use and protection authorized by the Federal Land Policy and Management Act and other relevant legislation;

(2) Opportunities to meet goals and objectives defined in national and State Director guidance;

(3) Resource demand forecasts and analyses relevant to the resource area;

(4) The estimated sustained levels of the various goods, services and uses that may be attained under existing biological and physical conditions and under differing management practices and degrees of management intensity which are economically viable under benefit cost or cost effectiveness standards prescribed in national or State Director guidance;

(5) Specific requirements and constraints to achieve consistency with policies, plans, and programs of other Federal agencies, State and local government agencies and Indian tribes;

(6) Opportunties to resolve public issues and management concerns;

(7) Degree of local dependence on resources from public lands;

(8) The extent of coal lands which may be further considered under provisions of § 3420.2-3(a) of this title; and

(9) Critical threshold levels which should be considered in the formulation of plan alternatives.

(b) In all cases, the inventory data shall be analyzed to determine whether there are areas containing resources, values, systems or processes or hazards eligible for further consideration for designation as an ACEC. In order to be considered eligible, all 4 of the following criteria shall be met.

(1) *Relevance.* There shall be present a historic, cultural or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard.

(2) *Importance.* The above described value, resource, system, process or hazard shall be important. This requires qualities of more-than-local significance and special worth, consequence, meaning, distinctiveness or cause for concern. A natural hazard can be important if it is a significant threat to human life or property.

(3) *Criticalness.* The qualities making the value, resource, system, process or hazard important are being subjected to decisive adverse change, such as through damage, reduction or other loss, or vulnerable to such adverse change unless special management attention is applied.

(4) *Protectability.* The value, resource, system or process shall be capable of being protected from decisive adverse change with the special management attention that can feasibly be applied. A natural hazard shall be of such a nature that the risk to human life or property it constitutes can, as a practicable matter, be reduced by special management attention that can feasibly be applied.

§ 1601.5-5 Formulation of alternatives.

Several complete, reasonable resource management alternatives shall be prepared for the resource area. One shall be for no action which means continuation of present levels or systems of resource use. The other alternatives shall provide a range of choices from those favoring resource protection to those favoring resource production. They shall reflect the variety of opinion and guidance applicable to the resource area. The total number of alternatives shall be limited to a manageable number for presentation and analysis by treating all reasonable variations as subalternatives. The plan shall note any alternatives identified and eliminated from detailed study and shall briefly discuss the reasons for their elimination.

§ 1601.5-6 Estimation of effects of alternatives.

The District Manager shall estimate and display the physical, biological, economic, and social effects of implementing each alternative. The estimate may be stated in terms of probable ranges, where effects cannot be precisely determined. The documentation shall include an indication of the reliability of the data and estimates involved. Estimation of effects shall be guided by planning criteria and shall comply with National Environmental Policy Act regulations, (40 CFR 1502.16).

§ 1601.5-7 Selection of preferred alternatives.

The District Manager shall evaluate the alternatives and their effects, according to the planning criteria, and develop a preferred alternative, based on information and analysis developed up to this point in the planning process, which shall best meet national and State Director guidance. The preferred alternative shall be incorporated into the draft plan and draft environmental impact statement. The resulting document shall be forwarded to the State Director for concurrence, publication and filing with the Environmental Protection Agency. This draft plan and environmental impact statement shall be provided to the Governor of the State involved in accordance with § 3420.2-6 of this title.

§ 1601.5-8 Selection of resource management plan.

After publication of the draft plan and draft environmental impact statement, the District Manager shall evaluate the comments received and select and recommend to the State Director, for review and concurrence, a proposed resource management plan and final environmental impact statement using current planning criteria developed pursuant to § 1601.5-2 of this title. If the proposed resource management plan is not within the range of the alternatives in the draft plan and draft environmental impact statement, and the environmental impact is significantly different, a new draft plan and draft environmental impact statement shall be prepared and filed. After review and concurrence in the proposed resource management plan, the State Director shall publish and file the plan and related environmental impact statement.

§ 1601.5-9 Monitoring and evaluation.

The District Manager shall establish intervals of not more than 5 years and standards for monitoring and evaluating the plans. Such intervals and standards shall be based on the sensitivity of the resource to the decisions involved and shall provide for evaluation to determine whether mitigation measures are satisfactory, whether any established threshold levels have been met or exceeded, whether there has been significant change in the related plans of other Federal agencies, State or local governments or Indian tribes, or whether there is new data of significance to the plan. The District Manager shall monitor and evaluate the plan in accordance with the established intervals and standards to determine whether there is sufficient cause to warrant amendment or revision of the plan. Monitoring and evaluation reports shall be written and available for public review.

§ 1601.6 Resource management plan approval use, and modification.

§ 1601.6-1 Resource management plan approval and administrative review.

(a) When the District Manager transmits the proposed resource management plan or revision to the State Director for review and concurrence, the State Director shall take either of the following actions, which shall be documented, in writing:

(1) Concur in the proposed plan, and return it to the District Manager for approval; or

(2) Refuse to concur in all or some aspect of the proposed plan. If concurrence cannot be granted, the proposed plan shall be returned to the District Manager with a written statement of reasons for nonconcurrence. The planning process shall be repeated as necessary to resolve the problems identified by the State Director.

(b) If the State Director considers an environmental value, resource, system or process within an area being proposed for ACEC designation to be of national or international significance, the State Director shall so advise the Director and provide reasons. If the Director makes such a finding, the Director may concur in the proposed designation. Subsequently, no plan, amendment or revision that adversely affects the ACEC can be made without the concurrence of the Director.

(c) Upon receipt of concurrence from the State Director, and no earlier than 30 days after the State Director files the final environmental impact statement, and subsequent to final action on any protest that may be filed, the District Manager shall approve the plan. Approval shall be withheld on any portion of a plan or amendment being protested until final action has been completed on such protest. Before such approval is given, there shall be public notice and opportunity for public comment on any significant change made to the proposed plan. The approval shall be documented in a concise public record of the decision, meeting the requirements of regulations for the National Environmental Policy Act (40 CFR 1505.2).

(d) Any person who participated in the planning process and has an interest which is or may be adversely affected by the approval or amendment of a resource management plan may protest such approval or amendment. A protest may raise only those issues which were submitted for the record to the District Manager during the planning process.

(1) The protest shall be in writing and shall be filed with the State Director in the State where the area covered by the plan or amendment is located. The protest shall be filed within 30 days of the date the Environmental Protection Agency published the notice of receipt of the final environmental impact statement containing the plan or amendment in the FEDERAL REGISTER. For an amendment not requiring the preparation of an environmental impact statement, the protest shall be filed within 30 days of the publication of the notice of its effective date.

(2) The protest shall contain:

(i) The name, mailing address, telephone number and interest of the person filing the protest;

(ii) A statement of the issue or issues being protested;

(iii) A statement of the part or parts of the plan or amendment being protested;

(iv) A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and

(v) A short, concise statement explaining why the District Manager's decision is wrong.

(3) The State Director shall promptly render a decision on the protest. The decision shall be in writing and shall set forth the reasons for the decision. The decision shall be sent to the protesting party by certified mail, return receipt requested.

(e) The decision of the State Director, as it relates to any issue that cannot, upon the issuance of a decision, be appealed under Part 4 of this title or any other protest procedure provided for in this title, may be protested to the Director within 30 days of receipt of the State Director's decision by a protesting party adversely affected by said decision.

(1) The protest shall contain:

(i) The name, mailing address, telephone number and interest of the person filing the protest; and

(ii) A short, concise statement explaining why the State Director's decision is wrong.

(2) The Director shall, within 30 days of receipt of the protest, review the protest and notify the protesting party whether supervisory authority to review the protest shall be exercised. If supervisory authority is not exercised, the decision of the State Director shall become the final decision of the Department of the Interior. If the Director notifies the protesting party that supervisory authority to review is being exercised, a decision shall be promptly rendered on the protest. The decision shall be in writing and shall set forth the reasons for the decision. The decision shall be sent to the protesting party by certified mail, return receipt requested.

(3) The decision of the Director shall be the final decision of the Department of the Interior.

§ 1601.6-2 Conformity and implementation.

(a) After a plan is approved or amended, and if otherwise authorized by law, regulation, contract, permit, cooperative agreement or other instrument of occupancy and use, the District Manager shall take appropriate measures to make operations and activities under existing permits, contracts, cooperative agreements or other instruments for occupancy and use, conform to the approved plan or amendment within a reasonable period of time.

(b) In addition, subsequent more detailed or specific planning, and all future resource management authorizations and actions, as well as budget or other action proposals to higher levels in the Bureau of Land Management and Department, shall conform to the plan.

(c) Any person adversely affected by a specific action being proposed to implement some portion of a resource management plan or amendment may appeal such action pursuant to 43 CFR 4.400.

§ 1601.6-3 Changing the resource management plan.

(a) *Maintenance.* Resource management plans and supporting components shall be maintained as necessary to reflect minor changes in data. Such maintenance may include further refining, constraining or documenting a previously approved decision incorporated in the plan. Updating and maintenance shall not result in expansion in the scope of the resource use or its location in the resource area, from that prescribed in an approved plan. Maintenance is not considered a plan amendment and shall not require the formal public involvement and interagency coordination process described under §§ 1601.3 and 1601.4 of this title or the preparation of environmental assessments or environmental impact statements.

(b) *Amendment.* A resource management plan may be changed through amendment. An amendment is initiated by the need to consider monitoring and evaluation findings, new data, new or revised policy, a change in circumstances or an applicant's proposed action, which may result in a significant change in a portion of the approved plan. An amendment shall be made through an environmental assessment, public involvement as prescribed in § 1601.3 of this title, interagency coordination and consistency determinations as prescribed in § 1601.4 of this title and any other data or analysis that may be appropriate. In all cases, the impact of the amendment on the plan shall be evaluated. If the amendment is being considered in response to an applicant's proposal, the analysis required for the proposal and for the amendment may occur simultaneously.

(1) If the environmental assessment does not disclose significant impact and if the amendment does not adversely affect a value, resource, system or process within an ACEC in which the Director has concurred in the designation, a finding of no significant impact may be made by the District Manager. The District Manager shall then make a recommendation on the amendment to the State Director for concurrence, and upon concurrence, the District Manager shall issue a public notice of the action taken on the amendment. If the amendment is approved, it may be implemented 30 days after such notice.

(2) If the amendment would adversely affect a value, resource, system or process within an ACEC in which the Director has concurred in the designation, or if a decision is made to prepare an environmental impact statement, the amending process shall follow the same procedure required for the preparation and approval of the plan, but limited to that portion of the plan being considered for amendment. If several plans are being amended simultaneously, a single environmental impact statement may be prepared to cover all amendments.

(c) *Revisions.* A resource management plan shall be revised at least every 10 years, based on monitoring and evaluation findings, new data, new or revised policy and changes in circumstances affecting the entire plan or major portions of the plan. Revisions shall comply with all of the requirements of these regulations for preparing and approving an original resource management plan.

§ 1601.6-4 Situations where action can be taken based on another agency's plan, or a land use analysis.

These regulations authorize the preparation of a resource management plan for whatever public land interests exist in a given land area. There are situations of mixed ownership where the public land estate is under non-Federal surface, or mixed administration where the public land administration is shared by the Bureau of Land Management with another Federal agency. The following provisions authorize the District Manager to use the plans of other agencies or a land use analysis when split or shared estate conditions exist.

(a) Another agency's plan (Federal, State or local) may be used as a basis for an action only if it is comprehensive and has considered the public land interest involved in a way comparable to the manner in which it would have been considered in a resource management plan, including the opportunity for public participation.

(b) After evaluation and review, the Bureau of Land Management may adopt another agency's plan for continued use as a resource management plan if an agreement is reached between the Bureau of Land Management and the other agency to provide for maintenance and amendment of the plan, as necessary, to comply with law and policy applicable to public lands.

(c) A land use analysis may be used to consider a coal lease when there is no Federal ownership interest in the surface or when coal resources are insufficient to justify plan preparation costs. The land use analysis process, as authorized by the Federal Coal Leasing Amendments Act consists of an environmental assessment or impact statement, public participation as required by § 1601.3 of this title, the consultation and consistency determinations required by § 1601.4 of this title, the protest procedure prescribed by § 1601.6-1 of this title and a decision on the coal lease proposal. A land use analysis meets the land use planning requirements of section 202 of the Federal Land Policy and Management Act. The decision to approve the land use analysis and lease coal is made by the Departmental official who has been delegated the authority to issue coal leases.

§ 1601.6-5 Management decision review by Congress.

The Federal Land Policy and Management Act requires that any Bureau of Land Management management decision, or action pursuant to a management decision, which totally eliminates one or more principal or major uses for two or more years with respect to a tract of 100,000 acres or more, shall be reported by the Secretary to Congress before it can be implemented. This report shall not be required prior to approval of a resource management plan which, if fully or partially implemented would result in such an elimination. The required report shall be submitted as the first action step in implementing that portion of a resource management plan which would require elimination of such a use.

§ 1601.6-6 Designation of areas unsuitable for surface mining.

(a) (1) The resource management planning process is the chief process by which public land is reviewed to assess whether there are areas unsuitable for surface coal mining operations under section 522(b) of the Surface Mining Control and Reclamation Act. Criteria for this assessment are found in § 3461.2 of this title.

(2) When petitions to designate land unsuitable under section 522(c) of the Surface Mining Control and Reclamation Act are referred to the Bureau of Land Management for comment, the resource management plan, if available, shall be the basis for comment. Formal designation of land as unsuitable is a function of the Office of Surface Mining Reclamation and Enforcement under the provisions of 30 CFR Subpart 769.

(3) In approving a resource management plan in which land is assessed unsuitable, the District Manager shall:

(i) Condition any leasing of the area for coal development; or

(ii) After approving a resource management plan, take all necessary steps to initiate the withdrawal of the land from leasing for coal development.

The District Manager shall petition the Office of Surface Mining Reclamation and Enforcement to designate the area as unsuitable under 30 CFR Part 769 where the land assessed as being unsuitable is covered by a coal lease on which operations are not exempted or excepted from the relevant criterion.

(b) (1) The resource management planning process is the chief process by which public land is reviewed for designation as unsuitable for entry or leasing for mining operations for minerals and materials other than coal under section 601 of the Surface Mining Control and Reclamation Act.

(2) When petitions to designate land unsuitable under section 601 of the Surface Mining Control and Reclamation Act are received by the Bureau of Land Management, the resource plan, if available, shall be the basis for determination for designation.

(3) In approving a resource management plan in which land is designated unsuitable, the District Manager shall:

(i) Condition any entry or leasing of the area for mining operations for minerals or materials other than coal; or

(ii) After approving a resource management plan, take all necessary steps to initiate the withdrawal of the land from entry or leasing for mining operations for minerals or materials other than coal.

§ 1601.6-7 Designation of Areas of Critical Environmental Concern.

Areas having potential for ACEC designation and protective management shall be identified and considered throughout the planning process (See §§ 1601.5-1 through 1601.5-9). Approval of a resource management plan constitutes formal designation of any ACECs involved.

§ 1601.7 Combined resource management plan and related environmental impact statement content and documentation.

§ 1601.7-1 Process records.

Records pertaining to the analysis and conclusions reached by the District Manager and staff throughout the planning and environmental analysis process shall be maintained. Such records shall provide the basis for the draft and final environmental impact statements and the development of, revision, or amendment to, the resource management plan. Such records shall be kept filed together and shall be available, on request, for public review.

§ 1601.7-2 Authority annotations.

The resource management plan and alternatives shall be annotated to show:

(a) Portions that may be implemented pursuant to authority delegated to the State Director.

(b) Portions that are not within the State Directors delegated authority and the organizational unit or officer that has such authority.

§ 1601.7-3 Plan and environmental impact statement document.

There shall be a single document (in separate volumes, if necessary) in a standard format serving as both a resource management plan and environmental impact statement. It shall contain at least:

(a) A brief description of the major issues and management concerns;

(b) The planning criteria used in its preparation;

(c) Descriptions and appropriate maps of the area covered;

(d) Goals, objectives and other direction from national policy, State Director guidance, and public participation;

(e) Details of the plan, including items (1) through (8) from the definition of the term "resource management plan" (see § 1601.0-6(n)). This portion of the plan may be organized into separate discrete sections which comprehensively cover major issues or topics so that the reader is able to find all relevant conclusions about an issue or topic. In all cases where an ACEC or coal is involved, there shall be discrete sections which provide—

(1) An identification of each designated ACEC, including the name, purpose and objective of designation, a description of environmental resources or hazards involved together with an evaluation of their relevance, importance, criticalness and protectability, and their special management requirements.

(2) An identification of high and medium value coal areas, indicating those lands acceptable for further consideration for coal leasing and how the Departmental unsuitable criteria were applied (see §§ 3420.2-3 and 3461 of this title).

(f) Alternatives considered;

(g) Alternatives eliminated from study and a brief discussion of the reasons;

(h) An analysis of the environmental impacts of the proposed plan and alternatives considered;

(i) Reasons for the alternative selected and, when it differs from the environmentally preferred alternative, the environmentally preferred alternative shall be identified as required by 40 CFR 1505.2(b);

(j) Relationship between the proposed plan and policies, plans, and programs of other Federal agencies, State and local government plans, Indian Tribes, including documentation required on consistency issues;

(k) List of preparers, together with their qualifications, as prescribed by 40 CFR 1502.17;

(l) Signature of concurring and approving officers; and

(m) Appropriate references to information used in development of the resource management plan.

§ 1601.8 Transition period.

(a) All management framework plans in the process of being prepared at the time these regulations are issued shall be reviewed, and the Director shall establish those portions of these regulations which are to be used in the completion of those plans, given time and budgetary constraints established through Federal budgets and legally mandated schedules. This determination shall be made and published in the planning schedule which is to be published early in fiscal year 1980 (see § 1601.3(a)).

(b) Until management framework plans, existing or in preparation, are superseded by resource management plans, proposed actions may be considered on the basis of these existing management framework plans as follows:

(1) The management framework plan shall be in compliance with the principle of multiple use and sustained yield and shall have been developed with public participation and governmental coordination, but not necessarily precisely as prescribed by §§ 1601.3 and 1601.4 of this title.

(2) Proposed actions which have been or are being discussed in court ordered management framework plan based environmental statements (e.g., range and timber management actions) may be given further consideration 30 days after the filing of the relevant environmental impact statement; and these regulations do not require any subsequent analysis or process.

(3) For proposed actions other than those described in paragraph (b)(2) of this section, determination shall be made by the District Manager whether the proposed action is in conformance with the management framework plan. Such determination shall be in writing and shall explain the reasons for the determination.

(i) If the proposed action is in conformance, it may be further considered for decision under procedure applicable to that type of action, including requirements of regulations for implementing the procedural provisions of the National Environmental Policy Act in 40 CFR Parts 1500 through 1508.

(ii) If the proposed action is not in conformance with the management framework plan, or if the management framework plan does not meet the requirements of paragraph (b)(1) of this section, and if the proposed action warrants further favorable consideration before a resource management plan is scheduled for preparation, such consideration shall be through a management framework plan amendment using the provisions of § 1601.6-3(b) of this title.

(c) If an action is proposed by an applicant where public lands are not covered by a management framework plan, an environmental analysis and an environmental impact statement, if necessary, plus any other data and analysis necessary to make an informed decision shall be used to assess the impacts of the proposal and to provide a basis for a decision on the proposal.

Group 1700—Program Management

PART 1720—PROGRAMS AND OBJECTIVES

Subpart 1725—Program Policy

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1725.0-1 Purpose.
1725.1 Current administration.
1725.2 Disposal policy.
1725.2-1 Pricing policy.
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1725.3-1 Priority of use for lands retained for multiple use management.
1725.3-2 Intensity of use and management of lands retained for multiple use management.
1725.3-3 Components of multiple use management.

AUTHORITY: R.S. 2478, 43 U.S.C. 1201, unless otherwise noted.

SOURCE: 35 FR 9512, June 13, 1970, unless otherwise noted.

Subpart 1725—Program Policy

§ 1725.0-1 Purpose.

This subpart lists general and basic policies which will be followed in the implementation of the various public land disposal and management authorities administered by the Secretary of the Interior through the Bureau of Land Management.

§ 1725.1 Current administration.

Pending classification authorized by the Classification and Multiple Use Act (78 Stat. 986, 43 U.S.C. 1411-18) or other available authority, all lands administered by the Secretary through the Bureau of Land Management will continue to be administered for multiple use and sustained yield of the several products and services obtainable therefrom.

§ 1725.2 Disposal policy.

Public lands will be transferred out of Federal ownership in the most efficient manner possible. This will be accomplished, where practicable, by the following procedures.

(a) Encouragement and assistance will be extended to State, county, and local governments in master planning and zoning. They will be encouraged to utilize the best modern techniques for quality land utilization, including preservation of natural beauty and open space values, and the prevention of uneconomic use and development of flood plains.

(b) Inclusion in patents of suitable conditions or restrictions on the use of the land, in those situations where a tract of land is suitable for disposal but has been evaluated as having a flood hazard potential which may cause economic loss to improvements or may endanger human life. If inclusion of needed conditions or restrictions in the deed are not permitted by law, the tract may be withheld from disposal to avoid, such losses.

(EO 11296, 31 FR 10663, Aug. 11, 1966)

(c) Participation of the public and consultation with local government will be invited in the formulation of plans for transfers of public lands.

(d) Timely and orderly identification and disposition of lands needed for urban or suburban purposes, or chiefly valuable for residential, commercial, industrial, agricultural, or public purposes will be made.

(e) Practices and procedures will be utilized which will achieve appropriate dispositions with minimum administrative costs.

(f) Priorities will be established based upon availability of funds, urgency of needs for public lands, and resulting economies or effectiveness of Government operations.

[35 FR 9512, June 13, 1970, as amended at 41 FR 29122, July 15, 1976]

§ 1725.2-1 Pricing policy.

The public land laws generally require as consideration for transfer of public lands out of Federal ownership, a fair return in the form of one or more of the following: Money, lands, or other property; development of the lands; or some public benefit, tangible or intangible. Where the law requires the Secretary to determine the return, such determination will be made in accordance with the following principles:

(a) Wherever the law does not provide otherwise, disposals to private persons and profit organizations will be made at not less than fair market value for the interests conveyed and through competitive bidding.

(b) Transfers to States and local government agencies for commercial, or industrial purposes will be through negotiated sale at fair market values.

(c) Transfer of land to States and local government agencies and to nonprofit organizations to be developed for public purposes will be made at prices and other terms that will encourage and facilitate the accomplishment of the public purposes involved.

(d) Where development is required by law or regulation in lieu of less than full payment, there must be appropriate assurance that the development effort will be bona fide and substantial.

§ 1725.3 Management policy.

§ 1725.3-1 Priority of use for lands retained for multiple use management.

No overall priority is assigned by the Classification and Multiple Use Act or by the Secretary to any specific use. The Secretary or his delegate will authorize, under applicable authority, that use or combination of uses which will best achieve the objectives of multiple use, taking into consideration all pertinent factors, including, but not limited to, ecology, existing uses, and the relative values of the various resources in particular areas.

§ 1725.3-2 Intensity of use and management of lands retained for multiple use management.

Consistent with the provisions of applicable law, the land will be managed:

(a) To attain the widest range of beneficial uses of the environment (including the land, water, flora, fauna, and other environmental elements), without undue environmental degradation, risk to health or safety, or other undesirable consequences.

(b) To attain optimum production of its various products and for those other beneficial uses for which the lands are physically and economically suited, consistent with acceptable environmental quality.

(c) To preserve important historic, cultural, and natural aspects of our national heritage.

The following matters will be considered:

(1) Existing or future economic and social needs for the resource, use, value, or commodity.

(2) The effect of any proposed use on all other resource values.

(3) Coordination and cooperation with the resource use and management programs of States, local governments, public organizations and private landowners.

(4) Consistency with national programs.

(5) Compatibility of the possible uses.

(6) Compatibility with the maintenance and enhancement of long-term productivity of the lands and the integrity of the environment.

[36 FR 6422, Apr. 3, 1971]

§ 1725.3-3 Components of multiple use management.

Section 1 of the Classification and Multiple Use Act lists ten objectives of public land management. The methods of management of the public lands will be governed by the provision of existing laws. The listed objectives as interpreted by the Secretary are as follows:

(a) *Domestic livestock grazing.* Management of public lands for domestic livestock grazing involves the protection, regulated use, and development of forage producing public lands and the management of livestock (cattle, sheep, horses, and goats) use to obtain a sustained yield of forage.

(b) *Fish and wildlife development and utilization.* Management of public lands for fish and wildlife development and utilization involves the protection, regulated use, and development of habitat on public lands and waters to obtain a sustained yield of fish and wildlife and provision and maintenance of public access to fish and wildlife resources.

(c) *Industrial development.* Management of public lands for industrial development involves the protection, regulated use, and development of public lands in a manner to facilitate the growth and stability of industry, whether off-site or on-site, long term or short term.

(d) *Mineral production.* Management of public lands for mineral production involves the protection, regulated use, and development of public lands in a manner to facilitate the extraction and processing of minerals, whether off-site or on-site, long term or short term.

(e) *Occupancy.* Management of public lands for occupancy involves the protection, regulated use, and development of lands as sites for economically and socially useful structures, either publicly or privately owned.

(f) *Outdoor recreation.* Management of public lands for outdoor recreation involves the protection, regulated use, and development of public lands having open-space values in a manner that will preserve those values and will make them available for appropriate recreation enjoyment by the public.

(g) *Timber production.* Management of public lands for timber production involves the protection, regulated use, and development of public forest and woodland areas to obtain a sustained yield of forest products.

(h) *Watershed protection.* Management of public lands for watershed protection involves the protection, regulated use, and development of any public lands in a manner to control runoff; to minimize soil erosion, siltation, and other destructive consequences of uncontrolled water flows; and to maintain and improve storage, yield, quality, and quantity of surface and subsurface waters.

(i) *Wilderness preservation.* Management of public lands for wilderness preservation involves the protection and regulated use of public lands which are in a roadless and primitive condition in a manner to preserve their essential wilderness character.

(j) *Preservation of public values.* Management of public land for preservation of public values that would be lost if the land passed from Federal ownership involves the protection, regulated use, and development of any public lands having unique or scarce characteristics or site values in a manner to insure their continued availability to the general public, either national or local, temporarily or permanently. It also involves the prevention of avoidable losses and damage, including avoidance of use and development which may require future expenditures for flood protection and flood damage relief.

PART 1780—COOPERATIVE RELATIONS

Subpart 1784—Advisory Committees

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1784.1-1 Establishment.
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1784.6-4 District advisory councils.
1784.6-5 Grazing advisory boards.

AUTHORITY: 5 U.S.C. Appendix 1, 43 U.S.C. 1701 et. seq.

SOURCE: 45 FR 8177, Feb. 6, 1980, unless otherwise noted.

Subpart 1784—Advisory Committees

§ 1784.0-1 Purpose.

This subpart contains standards and procedures for the creation, operation and termination of advisory committees to advise the Secretary of the Interior and Bureau of Land Management on matters relating to public lands and resources under the administrative jurisdiction of the Bureau of Land Management.

§ 1784.0-2 Objectives.

The objective of advisory committees established under these regulations is to make available to the Department of the Interior and Bureau of Land Management the expert counsel of concerned, knowledgeable citizens and public officials regarding both the formulation of operating guidelines and the preparation and execution of plans and programs for the use and management of public lands, their natural and cultural resources, and the environment.

§ 1784.0-3 Authority.

(a) The Federal Advisory Committee Act (5 U.S.C. Appendix 1) requires establishment of a system governing advisory committees in the Executive Branch of the Federal Government and specifies policies, procedures, and responsibilities for committee creation, management and termination.

(b) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.) requires—

(1) Establishment of advisory councils representative of major citizen interests concerned with resource management planning or the management of public lands;

(2) Creation of a California Desert Conservation Area Advisory Committee; and

(3) Under certain conditions, establishment of at least one grazing advisory board for each Bureau of Land Management administrative district in the 16 contiguous Western States.

(c) Section 2 of the Reorganization Plan No. 3 of 1950 (5 U.S.C. Appendix, as amended; 64 Stat. 1262), authorizes the Secretary of the Interior to make provisions deemed appropriate authorizing the performance by any other officer, or by any agency or employee or the Department of the Interior of any Departmental function. The establishment of advisory committees is deemed an appropriate action.

§ 1784.0-4 [Reserved]

§ 1784.0-5 Definitions.

As used in this subpart, the term:

(a) "Advisory committee" means any committee, council, or board established or utilized for purposes of obtaining advice or recommendations.

(b) "Secretary" means Secretary of the Interior.

(c) "Director" means the Director of the Bureau of Land Management.

(d) "Authorized representative" means the Federal officer or employee designated by an advisory committee charter who approves meeting agendas and attends all meetings of the committee and its subcommittees, if any.

(e) "Public lands" means any lands and interest in lands owned by the United States administered by the Secretary of the Interior through the Bureau of Land Management, except:

(1) Lands located on the Outer Continental Shelf; and

(2) Lands held for the benefit of Indians, Aleuts, and Eskimos.

§ 1784.0-6 Policy.

As part of the Department's program for public participation, it is the policy of the Secretary to establish and employ committees representative of major citizens' interests, or where required by law, of special citizen interests, to advise the Secretary and Director regarding policy formulation, program planning, decisionmaking, attainment of program objectives, and achievement of improved program coordination and economies in the management of public lands and resources; to regularly ensure that such committees are being optimally employed; and to limit the number of advisory committees to that essential to the conduct of the public's business.

§ 1784.1 Establishment, duration, termination, and renewal.

§ 1784.1-1 Establishment.

(a) An advisory committee required by statute is established or renewed upon the filing of a charter, signed by the Secretary, with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives.

(b) An advisory committee not specifically required by statute shall be established only when the Secretary has—

(1) Determined as a matter of formal record, after consultation with the General Services Administration, that establishment of the committee is in the public interest in connection with duties required of the Department of the Interior by law;

(2) Signed and filed the committee charter; and

(3) Published in the FEDERAL REGISTER a notice of his determination and of the establishment of the committee.

(c) An advisory committee shall not meet or take any action until the Committee's charter has been signed by the Secretary and copies filed with the appropriate committees of the Senate and House of Representatives and the Library of Congress.

§ 1784.1-2 Duration, termination, and renewal.

(a) An advisory committee not mandated by statute, i.e., established at the discretion of the Secretary, shall terminate not later than 2 years after its establishment unless, prior to that time, it is rechartered by the Secretary and copies of the new charter are filed with the appropriate committees of the Senate and House of Representatives. Any committee so renewed shall continue for not more than 2 additional years unless, prior to expiration of such period, it is again rechartered.

(b) Any advisory committee mandated by statute shall terminate not later than 2 years after the date of its establishment unless its duration is otherwise provided by law. Upon the expiration of each successive two-year period following date of establishment, a new charter shall be prepared and, after Secretarial approval, filed with the appropriate committees of the Senate and House of Representatives for any statutory advisory committee being continued.

§ 1784.2 Composition, avoidance of conflict of interest.

§ 1784.2-1 Composition.

(a) Each advisory committee shall be structured to provide fair membership balance, both geographic and interest-specific, in terms of the functions to be performed and points of view to be represented, as prescribed by its charter. Each shall be formed with the objective of providing representative counsel and advice about public land and resource planning, retention, management and disposal. No person is to be denied an opportunity to serve because of race, age, sex, religion or national origin.

(b) Only an individual who holds a lease or permit to graze livestock upon public lands under the jurisdiction of a Bureau of Land Management District Office shall be eligible to serve as a member of a grazing advisory board.

(c) Individuals shall qualify to serve on an advisory committee other than a grazing advisory board because their education, training, or experience enables them to give informed and objective advice regarding an industry, discipline, or interest specified in the charter.

§ 1784.2-2 Avoidance of conflict of interest.

(a) Persons or employees of organizations who hold leases, licenses, permits, contracts or claims which involve lands or resources administered by the Bureau of Land Management normally shall not serve on advisory committees except—

(1) Holders of grazing permits and leases may serve on grazing advisory boards;

(2) That the lack of candidates make them the only available candidates; or

(3) When they have special knowledge or experience which is needed to accomplish the committee functions to be performed.

(b) No advisory committee or board member, including a grazing advisory board member, shall participate in deliberations or vote on any matter in which the advisor has a direct interest.

§ 1784.3 Member service.

(a) Elections or appointments to an advisory committee shall be for two-year terms unless a shorter period is specified in the charter, the election procedures, or the appointing document. Terms of service normally shall coincide with duration of the committee charter. Individuals can be reelected to additional two-year terms of service on grazing boards without limit. Members of other advisory committees may be reappointed to additional terms at the discretion of the authorized appointing official.

(b) Committee members advise and report only to the official(s) specified in the charter. Service as an advisor, however, does not limit the rights of a member acting as a private citizen or as a member or official of another organization.

(c) The Secretary or his authorized representative may, after written notice, terminate the service of an advisor if, in the judgment of the Secretary or his authorized representative, such removal is in the public interest, or if the advisor—

(1) No longer meets the requirements under which elected or appointed:

(2) Fails or is unable to participate regularly in committee work; or

(3) Has violated Federal law or the regulations of the Secretary.

(d) For purposes of compensation, members of advisory committees, except for grazing advisory board members, shall be reimbursed for travel and per diem expenses when on advisory committee business, as authorized by 5 U.S.C. 5703.

§ 1784.4 Public participation.

§ 1784.4-1 Calls for nominations.

Except where otherwise provided, candidates for appointment to advisory committees are sought through public calls for public nominations.

Such calls shall be published in the FEDERAL REGISTER and are made through media releases and systematic contacts with individuals and organizations interested in the use and management of public lands and resources.

§ 1784.4-2 Notice of meetings.

(a) Notices of meetings of advisory committees and any subcommittees that may be formed shall be published in the FEDERAL REGISTER and distributed to the media 30 days in advance of a meeting. However, if urgent matters arise, notices of meetings of advisory committees and any subcommittees shall be published in the FEDERAL REGISTER and distributed to the media at least 15 days in advance of a meeting.

(b) Notices shall set forth meeting locations, topics or issues to be discussed, and times and places for the public to be heard.

§ 1784.4-3 Open meetings.

(a) All advisory committee and subcommittee meetings and associated field examinations shall be open to the public and news media.

(b) Anyone may appear before or file a statement with a committee or subcommittee regarding matters on a meeting agenda.

(c) The scheduling of meetings and the preparation of agendas shall be done in a manner that will encourage and facilitate public attendance and participation. The amount of time scheduled for public presentations and meeting times may be extended when the authorized representative considers it necessary to accommodate all who seek to be heard regarding matters on the agenda.

§ 1784.5 Operating procedures.

§ 1784.5-1 Functions.

The function of an advisory committee is solely advisory, and recommendations shall be made only to the authorized representative specified in its charter. Determinations of actions to be taken on the reports and recommendations of a committee shall be made only by the Secretary or his authorized representative.

§ 1784.5-2 Meetings.

(a) Advisory committees shall meet only at the call of the Secretary or his authorized representative.

(b) No meeting shall be held in the absence of the Secretary or his authorized representative.

(c) Each meeting shall be conducted with close adherence to an agenda which has been approved in advance by the authorized representative.

(d) The authorized representative may adjourn an advisory committee meeting at any time when—

(1) Continuance would be inconsistent with either the purpose for which the meeting was called or the established rules for its conduct; or

(2) Adjournment is determined to be in the public interest.

§ 1784.5-3 Records.

(a) Detailed records shall be kept of each meeting of an advisory committee and any subcommittees that may be formed. These records shall include as a minimum—

(1) The time and place of the meeting;

(2) Copies of the FEDERAL REGISTER and other public notices announcing the meeting;

(3) A list of advisors and Department or Bureau employees present;

(4) A list of members of the public present and who each represented;

(5) The meeting agenda;

(6) A complete and accurate summary description of matters discussed and conclusions reached;

(7) A list of recommendations made by the advisory committee;

(8) Copies of all reports received, issued, or approved by the Committee or subcommittee; and

(9) A description of the nature of public participation. The Chairperson of the advisory committee shall certify to the accuracy of meeting records.

(b) All records, reports, transcripts, minutes, recommendations, studies, working papers, and other documents prepared by or submitted to an advisory committee shall be available for public inspection and copying in the Bureau of Land Management office responsible for support of that committee. Upon request, copies shall be provided at the cost of duplication as established by the regulations in 43 CFR Part 2 (Appendix A).

§ 1784.6 Membership and functions of committees.

§ 1784.6-1 National Public Lands Advisory Council.

(a) Biennially, the Director shall submit to the Secretary a list of member nominations obtained from recommendations made by individuals, organizations and associations concerned with public land and resource management. From this list and from other sources, the Secretary shall appoint not less than 10 nor more than 17 members to represent the interests, services or disciplines specified in the Council charter. At least one member shall be an elected official of general purpose government. The Council shall elect its own officers.

(b) The National Public Lands Advisory Council shall advise the Secretary, through the Director, as to regulations, policies, plans and programs of national scope relative to public lands and resources under the jurisdiction of the Bureau of Land Management.

(c) The Council shall meet at the call of the Director. The Director or the Director's designee shall be the authorized representative at all meetings of the Council and committees that may be formed.

(d) Administrative support for the Council shall be the responsibility of the Director.

§ 1784.6-2 [Reserved]

§ 1784.6-3 California Desert Conservation Area Advisory Committee.

(a) The Director shall submit biennially to the Secretary a list of nominations for membership received following public calls for nominations. From this list and from other sources, the Secretary shall appoint 15 members to represent the interests, services, and disciplines specified by the Committee charter. One member shall be an elected official of general purpose government serving within the California Desert Conservation Area.

(b) The California Desert Conservation Area Advisory Committee advises the Secretary, through the Bureau of Land Management, regarding the preparation and implementaiton of a comprehensive, long-range plan for the management, use, development, and protection of the public lands within the California Desert Conservation Area of Southern California.

(c) The Committee and any subcommittee(s) formed shall meet at the call of the California State Director, Bureau of Land Management, and elect their own officers. The California State Director, or a designee, shall be the authorized representative at all meetings of the Committee and its subcommittees.

(d) Administrative support shall be provided by the office of the California State Director.

(e) The Committee shall terminate no later than December 31, 1981.

§ 1784.6-4 District advisory councils.

(a) An advisory council shall be established for each Bureau of Land Management District.

(b) Biennially, following public calls for nominations, the Secretary or his designee shall appoint not less than 10 nor more than 15 individuals to serve on the council. One of the appointees shall be an elected official of general purpose government serving within the District. Membership shall be balanced to reflect the various elements in the plans and programs for the District.

(c) A district advisory council advises the Bureau of Land Management District Manager to whom it reports regarding multiple use plans and programs for public lands and resources under the jurisdiction of that District.

(d) A District advisory council and its subcommittee(s) shall meet at the call of the District Manager and elect their own officers. The District Manager or a designee shall be the authorized representative at all meetings of the council and its subcommittees.

(e) Administrative support for a District advisory council and its subcommittees shall be provided by the office of the District Manager to whom it reports.

§ 1784.6-5 Grazing advisory boards.

(a) At least one grazing advisory board shall be established in each District office of the 16 contiguous Western States—

(1) Having jurisdiction over more than 500,000 acres of land subject to commercial livestock grazing; and

(2) Upon petition of a simple majority of public land livestock lessees and permittees under the jurisdiction of the District Office.

(b) The District Manager to whom the board reports shall call biennially for nominations from grazing lessees and permitees under the jurisdiction of the District office. From such nominations, the lessees and permittees shall, in turn, elect no less than 5 nor more than 8 individuals to serve on the board. Member service shall be without cost to the Government.

(c) The advice and recommendations to the District Manager by a grazing advisory board shall be limited to matters regarding—

(1) The development of allotment management plans; and

(2) The utilization of range-betterment funds.

(d) A grazing advisory board shall meet at least once a year at the call of the District Manager to whom it reports, and shall elect its own chairperson. The District Manager or a designee shall be the authorized representative at all meetings.

(e) Administrative support for a grazing advisory board shall be provided by the office of the District Manager to whom the board reports.

(f) All grazing advisory boards established under these regulations shall terminate December 31, 1985.

Group 1800—Public Administrative Procedures

PART 1810—INTRODUCTION AND GENERAL GUIDANCE

Subpart 1810—General Rules

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Subpart 1815—Disaster Relief

1815.0-3 Authority.
1815.0-5 Definitions.
1815.1 Timber sale contracts.
1815.1-1 Relief granted.
1815.1-2 Applications.

AUTHORITY: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

Subpart 1810—General Rules

SOURCE: 35 FR 9513, June 13, 1970, unless otherwise noted.

§ 1810.1 Rules of construction; words and phrases.

Except where the context of the regulation or of the Act of the Congress on which it is based, indicates otherwise, when used in the regulations of this chapter:

(a) Words importing the singular include and apply to the plural also;

(b) Words importing the plural include the singular;

(c) Words importing the masculine gender include the feminine as well;

(d) Words used in the present tense include the future as well as the present;

(e) The words "person" and "whoever" include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals;

(f) "Officer" and "authorized officer" include any person authorized by law or by lawful delegation of authority to perform the duties described;

(g) "Signature" or "subscription" includes a mark when the person making the same intended it as such;

(h) "Oath" includes "affirmation", and "sworn" includes "affirmed";

(i) "Writing" includes printing and typewriting as well as holographs, and "copies" include all types of reproductions on paper, including photographs, multigraphs, mimeographs and manifolds;

(j) The word "company" or "association", when used in reference to a corporation, shall be deemed to embrace the words "successors and assigns of such company or association", in like manner as if these last-named words, or words of similar import, were expressed.

§ 1810.2 Communications by mail; when mailing requirements are met.

(a) Where the regulations in this chapter provide for communication by mail by the authorized officer, the requirement for mailing is met when the communication, addressed to the addressee at his last address of record in the appropriate office of the Bureau of Land Management, is deposited in the mail.

(b) Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication under the regulations of this chapter, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. An offer of delivery which cannot be consummated at such last address of record because the addressee had moved therefrom without leaving a forwarding address or because delivery was refused or because no such address exists will meet the requirements of this section where the attempt to deliver is substantiated by post office authorities.

§ 1810.3 Effect of laches; authority to bind government.

(a) The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

(b) The United States is not bound or estopped by the acts of its officers or agents when they enter into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

(c) Reliance upon information or opinion of any officer, agent or employee or on records maintained by land offices cannot operate to vest any right not authorized by law.

§ 1810.4 Information required by forms.

Whenever a regulation in this chapter requires a form approved or prescribed by the Director of the Bureau of Land Management, the Director may in that form require the submission of any information which he considers to be necessary for the effective administration of that regulation.

Subpart 1812—Qualifications of Practitioners

Source: 35 FR 9513, June 13, 1970, unless otherwise noted.

§ 1812.1 General.

§ 1812.1-1 Regulations governing practice before the Department.

Every individual who wishes to practice before the Department of the Interior, including the Bureau, must comply with the requirements of Part 1 of this title.

§ 1812.1-2 Inquiries.

No person other than officers or employees of the Department of the Interior shall direct any inquiry to any employee of the Bureau with respect to any matter pending before it other than to the head of the unit in which the matter is pending, to a superior officer, or to an employee of the unit authorized by the unit head to answer inquiries.

Subpart 1813—Public Land Records

Source: 35 FR 9513, June 1970, unless otherwise noted.

§ 1813.1 Tract books and plats.

§ 1813.1-1 Notations to records.

(a) Notations shall be made on the tract books and plats of all applications and entries of public lands, regardless of their character, in order that the status of a tract may be readily ascertained by the person examining either tract book or plat, and the authorized officer shall cause the proper notations to be made on the plats as well as on the tract books.

(b) All withdrawals, reservations, classifications, designations, and similar orders affecting the disposition of the land will be noted on the appropriate records.

§ 1813.1-2 Filing of township plats.

(a) After acceptance of a survey, the original plat thereof will be returned to the State Director, the duplicate plat will be retained in the files of the Bureau of Land Management in Washington, D.C., and the triplicate plat will be forwarded to the proper office. The plat will be placed on record in the open files of the respective offices immediately upon receipt thereof and will then be available to the public as a matter of information only with respect to the technical data and descriptions appearing thereon; copies of such plat and the related field notes will be furnished upon request and payment of the costs as provided in § 2.4 of this title. When the authorized officer of the proper office is instructed to file the plat without the usual public notice, such plat will be regarded as officially filed in his office on the date of receipt.

(b) If public notice of the filing of the plat is to be given, the authorized officer shall prepare the notice for publication in the FEDERAL REGISTER.

§ 1813.2 Serial register.

§ 1813.2-1 Inspection of serial register.

The serial register is a public record and may be reasonably inspected by any person, provided such examination may be made without interfering with the orderly dispatch of public business. Should the authorized officer ascertain that any person is obtaining information therefrom for improper purposes, he will deny such person further access thereto.

§ 1813.3 Production of records in court.

§ 1813.3-1 Statutory authority.

Whenever, pursuant to the act of April 19, 1904 (33 Stat. 186; 43 U.S.C. 13), the authorized officer shall be served with a subpoena duces tecum or other valid legal process requiring him to produce, in any United States court or in any court of record of any State, the original application for entry of public lands or the final proof of residence and cultivation or any other original papers on file in the Bureau of Land Management on which a patent to land has been issued or which furnish the basis for such patent, it shall be the duty of such authorized officer to at once notify the Director of the Bureau of Land Management of the service of such process, specifying the particular papers he is required to produce, and upon receipt of such notice from any authorized officer the Director of the Bureau of Land Management shall at once transmit to such authorized officer the original papers specified in such notice, and attach to such papers a certificate, under seal of his office, properly authenticating them as the original papers upon which patent was issued. The said act also provides that such papers so authenticated shall be received in evidence in all courts of the United States and in the several State courts of the States of the Union. (33 Stat. 186; 43 U.S.C. 13)

CROSS REFERENCE: For testimony of employees and use of books, records and files in judicial and administrative proceedings, see Part 2 of this title.

Subpart 1815—Disaster Relief

AUTHORITY: Sec. 242(a)(b), Disaster Relief Act of 1970, 84 Stat. 1744.

SOURCE: 36 FR 15534, Aug. 17, 1971, unless otherwise noted.

§ 1815.0-3 Authority.

Disaster Relief Act of 1970 (84 Stat. 1744).

§ 1815.0-5 Definitions.

"Major disaster" means any hurricane, tornado, storm, flood, high water, winddriven water, tidal wave, earthquake, drought, fire, or other catastrophe in any part of the United States, which, in the determination of the President, is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government to supplement the efforts and available resources of States, local governments, and relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby, and with respect to which the Governor of any State in which such catastrophe occurs or threatens to occur certifies the need for Federal disaster assistance and gives assurance of the expenditure of a reasonable amount of the funds of such State, its local governments, or other agencies for alleviating the damage, loss, hardship or suffering resulting from such catastrophe.

§ 1815.1 Timber sale contracts.

§ 1815.1-1 Relief granted.

(a) Where an existing timber sale contract does not provide relief to the timber purchaser from major physical change, not due to negligence of the purchaser, prior to approval of construction of any section of specified road or other specified development facility and, as a result of a major disaster, a major physical change results in additional construction work in connection therewith, the United States will bear a share of the increased construction costs. The United States' share will be determined by the authorized officer as follows:

(1) For sales of less than 1 million board feet, costs over $1,000;

(2) For sales of from 1 to 3 million board feet, costs over the sum of $1 per thousand board feet;

(3) For sales of over 3 million board feet, costs over $3,000.

(b) Where the authorized officer determines that the damages caused by such major physical change are so great that restoration, reconstruction, or construction is not practical under this cost-sharing arrangement, he may cancel the timber sale contract notwithstanding any provisions thereof.

§ 1815.1-2 Applications.

(a) *Place of filing.* The application for relief shall be filed in the office which issued the contract.

(b) *Form of application.* No special form of application is necessary.

(c) *Contents of application.* (1) The date of issuance of the contract and any identification number.

(2) The particular disaster and its effect upon contract performance.

(3) An estimate of the damages suffered.

(4) A statement of the relief requested.

(5) An estimate of time which will be needed to overcome the delay in performance caused by the disaster.

PART 1820—APPLICATION PROCEDURES

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Subpart 1821—Execution and Filing of Forms

AUTHORITY: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

SOURCE: 35 FR 9514, June 13, 1970, unless otherwise noted.

§ 1821.1 Names of claimants.

Full names of claimants must appear in applications, final certificates, and patents.

§ 1821.2 Office hours; place for filing; time limit.

[38 FR 12111, May 9, 1973]

§ 1821.2-1 Office hours; place for filing.

(a) The offices listed in paragraph (d) of this section are open to the public for the filing of applications and other documents and inspection of records on Monday through Friday during the regular business hours of each office, with the exception of those days when the office may be closed because of a national holiday or by Presidential or other administrative order.

(b) Applications and other documents cannot be received for filing by the authorized officer out of office hours, nor elsewhere than at his office; nor can affidavits or proofs be taken by him except in the regular and public discharge of his ordinary duties.

(c) Copies of forms may be obtained from any of the offices listed under paragraph (d) of this section. However, completed forms and other documents must be filed in the office having jurisdiction.

(d) Location of the offices and area of jurisdiction of each office in which applications for rights and privileges under Subchapters A, B, and C of this title must be filed are as follows:

OFFICE AND AREA OF JURISDICTION

Alaska State Office, 701 "C" Street, Box 13, Anchorage, Alaska 99513—Southern Alaska.[1]

Fairbanks District Office, N. Post of Ft. Wainwright, P.O. Box 1150, Fairbanks, Alaska 99707—Northern Alaska.[1]

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[1] See diagram for division line.

Arizona State Office, 2400 Valley Bank Center, Phoenix, Arizona 85073—Arizona.

California State Office, Federal Building, 2800 Cottage Way, Sacramento, California 95825—California.

Colorado State Office, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202—Colorado.

Eastern States Office, 350 So. Pickett Street, Alexandria, Virginia 22304—Arkansas, Iowa, Louisiana, Minnesota, Missouri, and all States east of the Mississippi River.

Idaho State Office, Federal Building, 550 West Fort Street, Box 042, Boise, Idaho 83724—Idaho.

Montana State Office, Granite Tower, 222 N. 32nd Street, P.O. Box 30157, Billings, Montana 59107—Montana, North Dakota, and South Dakota.

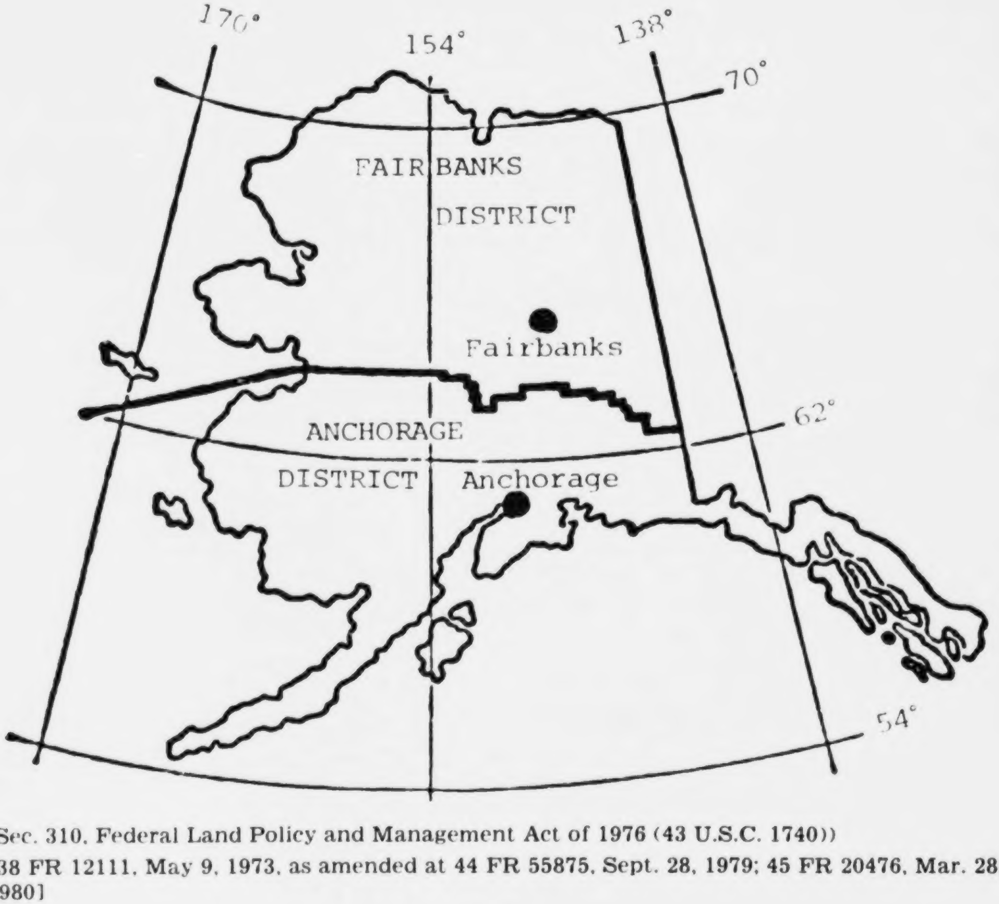
Nevada State Office, Federal Building, 300 Booth Street, Reno, Nevada 89509—Nevada.

New Mexico State Office, U.S. Post Office and Federal Building, South Federal Place, Santa Fe, New Mexico 87501—New Mexico, Oklahoma, and Texas.

Oregon State Office, 729 Northeast Oregon Street, Portland, Oregon 97208—Oregon and Washington.

Utah State Office, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111—Utah.

Wyoming State Office, 2515 Warren Avenue, P.O. 1828, Cheyenne, Wyoming 82001—Wyoming, Kansas, and Nebraska.



(Sec. 310, Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740))

[38 FR 12111, May 9, 1973, as amended at 44 FR 55875, Sept. 28, 1979; 45 FR 20476, Mar. 28, 1980]

§ 1821.2-2 Time limit for filing documents.

(a) The authorized officer will reject all applications to make entry which are executed more than 10 days prior to filing.

(b) Such rejections should be subject to the right of appeal and to the right to file a new and properly executed application, or to reexecute the rejected application, without priority.

(c) The authorized officer will accept as filed within the time named in paragraph (a) of this section all applications to enter which were deposited in the mails within 10 days from the date of execution.

(d) Any document required or permitted to be filed under the regulations of this chapter, which is received in the proper office, either in the mail or by personal delivery when the office is not open to the public, shall be deemed to be filed as of the day and hour the office next opens to the public.

(e) Any document required by law, regulation or decision to be filed within a stated period, the last day of which falls on a day the office is officially closed, shall be deemed to be timely filed if it is received in the proper office on the next day the office is open to the public.

(f) Except when paragraph (c) of this section is applicable, filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing.

(g) When the regulations of this chapter provide that a document must be filed or a payment made within a specified period of time, the filing of the document or the making of the payment after the expiration of that period will not prevent the authorized officer from considering the document as being timely filed or the payment as being timely made except where:

(1) The law does not permit him to do so.

(2) The rights of a third party or parties have intervened.

(3) The authorized officer determines that further consideration of the document or acceptance of the payment would unduly interfere with the orderly conduct of business.

[38 FR 12111, May 9, 1973]

§ 1821.2-3 Simultaneous filings; determination of order of priority.

(a) Two or more documents are considered as simultaneously filed when:

(1) In accordance with the regulations in § 1821.2-2, they are delivered to and received by the proper office at the same time; or

(2) They are filed pursuant to an order which specifies that documents delivered to and received by the proper office during a specified period shall be considered as simultaneously filed.

(b) Whenever it is necessary, for the purposes of the regulations in this chapter, to determine the order of priority of consideration among documents which have been simultaneously filed, such order of priority will be established by a drawing open to public view.

(c) Nothing in this regulation shall be construed as denying any preference right granted by applicable law or regulation or as validating any document which is invalid under applicable law or regulation.

[38 FR 12112, May 9, 1973]

§ 1821.2-4 Use of certified mail.

Certified mail as outlined in 39 CFR Part 58, may be used in lieu of registered mail in public land matters within the jurisdiction of the Department of the Interior except where use of registered mail is specifically required by statute.

§ 1821.3 Oaths.

§ 1821.3-1 Elimination of the requirements.

(a) Written statements in public land matters under the jurisdiction of the Department of the Interior need not be made under oath unless the Secretary in his discretion shall so require (43 U.S.C. 1211). All written statements in public land matters within the jurisdiction of the Department of the Interior required prior to June 3, 1948, by law, or Chapter I of this title, to be made under oath, need no longer be made under oath, except as provided in this paragraph.

(1) Affidavits must be furnished where required by Parts 1840 and 1850.

(2) Final proofs required by R.S. 2294 (43 U.S.C. 254). (See §§ 1821.3-2, 2511.3-4 and 2521.6(d) of this chapter.)

(3) Statements as to the financial worth of individual sureties on bonds furnished in connection with leases, licenses or permits granted under the public land laws, known as "Affidavits of Justification," must be made in affidavit form.

(b) Unsworn statements in public land matters are subject to Title 18, U.S.C., section 1001, which makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statement or representations as to any matter within its jurisdiction.

(c) False statements as to any material fact made by an applicant in connection with applications, allowance of which is discretionary with the authorized officer, are a proper basis for rejection of the applications.

§ 1821.3-2 Officers qualified.

(a) Oaths required under the homestead, and, desert-land acts may be made before the authorized officer of the proper office for the district embracing the land sought; or before any person authorized by the laws of or pertaining to the State to administer oaths.

§ 1821.4 Notations on applications.

§ 1821.4-1 Notation of rights-of-way.

(a) In order that all persons making entry of public lands which are affected by rights-of-way may have actual notice thereof, a reference to such right-of-way should be made upon the original entry papers and upon the notice of allowance of the application issued to the entryman.

§ 1821.4-2 When notation required.

The authorized officer will make notations of rights-of-way on entry papers, only where his records show that the land involved, or some part of it, is covered by an approved application for right-of-way. See: Minneapolis, St. Paul & Sault Ste. Marie Railway Co. v. Doughty (208 U.S. 251, 52 L. ed. 474). Applicants to enter public lands that are affected by a mere pending application for right-of-way, should be verbally informed thereof and given all necessary information as to the character and extent of the project embraced by the right-of-way application; and, further, that they must take the land subject to whatever right may have attached thereto under the right-of-way application, and at the full area of the subdivisions entered, irrespective of the questions of priority or damages, these being questions for the courts to determine.

§ 1821.5 Entries for lands in more than one land district.

§ 1821.5-1 Governing regulations.

Persons desiring to make and perfect entries of land lying partly within one land district and partly within another will be governed by §§ 1821.5, 1823.4(a) and (b).

§ 1821.5-2 Applications and fees to be filed in each office.

Complete applications must be filed in each office, together with the usual fee and commissions payable for the land in each land district, besides any other payment required by law. Each application should contain a proper reference to the other application.

§ 1821.5-3 Mining claims.

In applying for patent to a mining claim embracing land lying partly within one land district and partly within another, a full set of papers must be filed in each office, except that one abstract of title and one proof of patent expenditures will be sufficient. Only one newspaper publication and one posting on the claim will be required, but proof thereof must be filed in both offices, the statements as to posting plat and notice on the claim to be signed within the respective land districts, as well, also, as all of the other statements required in mineral patent proceedings, except such as, under the law, may be signed outside of the land district wherein the land applied for is situated. Publication, payment of fees, and the purchase price of the land will be further governed by the provisions of § 1823.4(a).

Cross Reference: For mining claims, see Subpart 3821 of this chapter.

§ 1821.6 Amendments.

§ 1821.6-1 Authority.

Section 2372, United States Revised Statutes, as amended by the act of February 24, 1909 (35 Stat. 645; 43 U.S.C. 697), authorizes the amendment of entries and patents for the purpose of correcting errors pertaining to the description of the lands entered and intended to be entered.

§ 1821.6-2 Application to amend; form; where filed.

(a) Application for amendment must be filed in accordance with the provisions of § 1821.2. The application should be substantially in accordance with the form approved by the director. This form may be used for the amendment of nonmineral entries where the applicant is either the orginal entryman, the assignee, or transferee, by making such modifications as the facts may justify. Each application must be signed by the applicant and corroborating witnesses, and must describe the land erroneously entered, as well as that desired by way of amendment, by subdivision, section, township, and range; and where the land originally intended to be entered has been disposed of the applicant must describe that land also and show why he can not obtain it.

(b) All applications must be accompanied by an application service fee of $10 which is not returnable.

§ 1821.6-3 Showings required.

(a) *Nature and source of error; good faith.* The application must contain a full statement of all the facts and circumstances, showing how the mistake occurred and what precautions were taken prior to the filing of the erroneous entry, selection, or location, to avoid error in the description. The showing in this regard must be complete, because no amendment will be allowed unless it appears that proper precaution was taken to avoid error at the time of selection. The application will be closely scrutinized, and will not be allowed unless the utmost good faith is shown.

(b) *Removal of timber.* The application must also show that no timber or other thing of value has been taken from the land erroneously entered, located, or selected; that the land sought by way of amendment is not occupied or claimed by an adverse claimant; that it is of the character contemplated by the law under which the claim is presented, and in cases of nonmineral claims, the kind and quantity of timber on each legal subdivision applied for must be stated.

(c) *Ownership; deed of reconveyance.* (1) Where no certificate has been issued and the amendment is sought by the original claimant, it must be shown that the land embraced in the erroneous entry, location, or selection has not been sold, assigned, relinquished, or in any way encumbered, and for this purpose the statement of the applicant, corroborated as provided for in paragraph (d) of this section will be sufficient; but where final certificate has been issued, or where amendment is sought by a transferee, it must be shown by a certificate from the proper recording officer of the county in which the land is situated, or by satisfactory abstract of title, that the applicant is the owner of such land under the entry, location or selection, as the case may be, and it must also be shown that there are no liens, unpaid taxes, or other encumbrance charged against the land. Where patent has been issued, reconveyance of the land embraced in the patent must be made by deed executed by the claimant, in accordance with the laws governing the execution of deeds for the conveyance of real estate in the State in which the land is situated, such deed to be accompanied by a satisfactory abstract of title or a certificate from the register of deeds in and for the county in which the land is situated, showing the title to be clear and free of encumbrance.

(2) Where application for issuance of amended patent is made by the transferee of the original patentee, the new patent may be issued in the name of the transferee. (51 L.D. 281.) Similarly, patent may be issued to the trans-

feree of the entryman of an unpatented entry which has been amended before issuance of patent. (51 L.D. 335.)

(d) *Corroboration.* The statement of the applicant must be corroborated by at least two witnesses who have been well acquainted with him for a sufficient length of time to enable them to testify as to the character and reputation of the applicant for truth and veracity. At least one witness must verify the allegations of the application on his personal knowledge of the facts therein stated, so far as such facts may well be known to anyone other than the applicant, and as to other facts, including those concerning the applicant's intent or purpose, such witness may testify on information and belief.

§ 1821.6-4 Publication of notice; statements of witnesses.

Where amendments are allowed of claims upon which final proof has been submitted and publication or posting of notice is required, republication of notice applicable to the class of entry for which application to amend is made will be required; and if the land sought by way of amendment is the land originally intended to be entered, the witnesses who testified when the final proof was made on the erroneous entry must submit statements, showing that the land described in the application for amendment is the same land to which they intended to refer in their testimony, formerly given. If, however, the same witnesses can not be secured, or if the land sought by way of amendment is not the land originally intended to be entered, new proof must be made.

§ 1821.6-5 Amendments in exercise of equitable powers.

(a) The statute to which §§ 1821.6-1 to 1821.6-3(d) refer, does not, in terms, provide for amendment of an entry, selection, or location for the purpose of correcting any error other than such as affects and pertains to the description of the lands entered and intended to be entered. Nevertheless, in the exercise of its equitable power and authority, the Department will grant amendment of an entry, made for the purpose of securing a home upon the public lands, or for the purpose of effecting reclamation in accordance with the provisions of the desert-land law, in any case where it is satisfactorily shown that, through no fault or neglect of the entryman, the land embraced by his entry is so far unfit for, or insusceptible of occupancy, cultivation, or irrigation, as to render it practically impossible to perform the requirements of the law thereon.

(b) Applications for amendment presented pursuant to paragraph (a) of this section will not be granted, except where at least one legal subdivision of the lands originally entered is retained in the amended entry, and any such application must be submitted within 1 year next after discovery by the entryman of the existence of the conditions relied upon as entitling him to the relief he seeks, or within 1 year succeeding the date on which, by the exercise of reasonable diligence, the existence of such conditions might have been discovered: *Provided, nevertheless,* That where an applicant for amendment has made both homestead and desert-land entries for contiguous lands, amendment may be granted whereby to transfer the desertland entry, in its entirety, to the land covered by the homestead entry, and the homestead entry, in its entirety, to the land covered by the desert-land entry, or whereby to enlarge the desert-land entry in such manner as that it will include the whole or some portion of the lands embraced in the homestead entry, sufficient equitable reason for such enlargement being exhibited, and the area of the enlarged entry in no case exceeding 320 acres. Applications for such amendments may be made under §§ 1821.6-1 to 1821.6-5(a), and § 2521.7 (a) of this chapter and on the prescribed form, insofar as the same are applicable. A supplemental statement should also be furnished, if necessary, to show the facts.

CROSS REFERENCES: For homesteads, generally, see Part 2510 of this chapter. For desert-land entries, see Part 2520 of this chapter.

§ 1821.6-6 When amendment becomes effective.

Amendment of an entry becomes effective, by relation, as of the date of the original entry in all cases except where the effect of the amendment is to transfer the entry in its entirety to lands other than those originally selected for entry. In all cases, therefore, where amendment is granted to correct a mistake in description and to effect the entryman's original intention, or to increase merely the area embraced by the entry, such amendment will not be effective to alter the time within which the requirements of the law must be complied with. In other cases, the date of the amendment will be treated as the date of entry and the time within which residence is to be established or proof of any kind submitted will be computed from that date.

§ 1821.7 Alaska.

§ 1821.7-1 Applications not to be rejected because executed more than 10 days prior to filing.

Section 1821.2-2 directs authorized officers to reject all applications to make entry which are executed more than 10 days prior to filing. Until such time as the transportation facilities in Alaska are improved the provisions of said section will not be held applicable to applications filed in the proper offices of Alaska.

§ 1821.7-2 Joint action to acquire public lands.

(a) Ten or more persons may file in the proper office applications in a single group under any one or more of the laws relating to the acquisition of lands in Alaska, including the Homestead Laws (30 Stat. 409; 32 Stat. 1028; 48 U.S.C. 371), Small Tract Laws (52 Stat. 609, 59 Stat. 467; 43 U.S.C. 682a), Home-Site Law (48 Stat. 809; 48 U.S.C. 461) and Town-Site Laws (R.S. 2380-2389, as amended, 43 U.S.C. 711-722; 26 Stat. 1099; 48 U.S.C. 355). Each application must be complete in itself except that information common to more than one application in a group need not be duplicated at length but may appear in or as an appendix to one such application and be adopted by reference made in the other applications.

(b) Where certain requirements must be met before an application to enter or purchase may be filed, a statement of intention to meet such requirements, signed by each prospective applicant, must be submitted in lieu of an application. Upon compliance with applicable requirements as to residence or otherwise, each such person must file an actual application as required by law.

(c) Each group of applications filed hereunder should be accompanied by two copies of a diagram showing the plan of development contemplated by the applicants. Each such application may describe the land covered by it in terms of a lot or tract as set forth in such diagram or the preliminary diagram specified in this paragraph. The diagram should include specific information as to the relative location and areal extent of each tract or site which it is contemplated will be devoted to school and other municipal or common purposes, to stores or other commercial enterprises, to housing and to agriculture and grazing. Assistance in the preparation of a preliminary diagram, which need not pertain to a particular tract of land, may be obtained by communicating in person or by mail with the United States Department of the Interior, Washington, D.C., 20240. Such preliminary diagram may be used as the basis for the diagram to be filed with the group of applications and which must relate to specific land.

(d) Upon the filing of such a diagram by the applicants or their authorized representative, a petition or petitions may be filed requesting the withdrawal of the lands to be devoted to school and other municipal or common purposes.

(e) If any of the applications involve unsurveyed public lands, such applications may also be accompanied by a petition, either joint or several, for the withdrawal of the lands in behalf of specified applicants, the survey, and, in appropriate cases, the classification under the Small Tract Law, of such lands. The filing of such applications confers of itself no right upon the applicants. If the withdrawal is made, and the land classified, applicants shall have the first right to acquire the interests for which they have applied, to the extent permitted by statute. Any application, entry or withdrawal made pursuant to this section shall be subject to all valid prior claims.

(f) Persons who propose to file applications in a group under paragraph (a) of this section, by a writing to be filed in the proper office, may designate a representative or representatives who may, at their direction and in their behalf, make the actual filing of the applications, previously executed by the applicants and accompanying and supporting documents; pay any or all fees and costs in connection therewith; and, in complete satisfaction of the requirements of § 2511.1(a) of this chapter, personally examine the lands sought to be entered and make and file a statement setting forth the information otherwise required of each individual applicant by § 2511.1-6(a) of this chapter.

(g) Where ten or more settlers are entitled by statute to request and receive a free survey of the lands upon which they have settled, they may file a joint petition stating the facts as to compliance with law by each of them. Such petition must be corroborated by two witnesses having knowledge of the facts.

(h) Where the costs of any survey made under this section are required by statute to be borne by one who seeks the survey, the necessary deposit for costs must be made. The individual applicant is ultimately responsible in such instances for the costs entailed in satisfying his request for such a survey, but persons who file joint or group petitions for such surveys may share the costs thereof in any proportion they may determine.

Subpart 1822—Payments and Repayments

AUTHORITY: Sec. 4, 21 Stat. 287, as amended; 43 U.S.C. 263, unless otherwise noted.

SOURCE: 35 FR 9519, June 13, 1970, unless otherwise noted.

§ 1822.0-3 Authority for repayments.

The repayment of moneys received by the Government and covered into the United States Treasury, in connection with the disposal or attempted disposal of the public lands, is authorized by sections 2362 and 2363, Revised Statutes (43 U.S.C. 689, 690). The general laws providing for the return of such moneys are contained in the act of June 16, 1880 (21 Stat. 287; 43 U.S.C. 263) and the act of June 14, 1960 (43 U.S.C. 1374).

§ 1822.1 Payments.

§ 1822.1-1 Amount.

(a) The amount of payments required in connection with the processing of any application, sale, entry, lease, permit, or other transaction governed by the regulations in this chapter are set forth in applicable regulations.

(b) The amount of payments required for copies and abstracts of records, including plats and diagrams showing the status of lands, are determined as provided in Part 2 of this title.

(R.S. 2478; 43 U.S.C. 1201)

§ 1822.1-2 Forms of remittances.

(a) Subject to the condition set forth in paragraph (b) of this section, forms of remittances that will be accepted in payment of fees, rentals, purchase price, and other charges required by the regulations in this chapter include cash and currency of the United States and checks, money orders, and bank drafts made payable to the Bureau of Land Management. Checks or drafts are accepted subject to collection and final payment without cost to the Government office.

(b) Personal checks are an acceptable form of remittance except where the regulations in this chapter specifically provide otherwise.

(R.S. 2478; 43 U.S.C. 1201)

§ 1822.2 Repayments.

§ 1822.2-1 Filing of applications.

Applications for repayment should be filed on a form approved by the Director with the authorized officer of the proper office.

§ 1822.2-2 Statement of grounds for repayment.

Where an application is filed, it should be accompanied by a statement by the applicant setting forth fully the grounds upon which repayment is claimed.

§ 1822.3 Act of June 16, 1880.

§ 1822.3-1 Statutory provisions.

(a) *Act of June 16, 1880.* The act of June 16, 1880 (21 Stat. 287; 43 U.S.C. 263) provides for the repayment of fees, commissions, purchase money, and excesses paid in connection with entries of the public lands canceled for conflict, or where, from any cause, the entry was erroneously allowed. This clause directs that said moneys shall be repaid to the person who made such entry, or to his heirs or assigns, and it requires the surrender of the receipts issued and the execution of a proper relinquishment of all claims to the lands acquired under the invalid entry.

§ 1822.3-2 Applications.

(a) Claims for repayment should be made on a form approved by the Director or the equivalent thereof, which application must contain a statement that the title to the land under the invalid entry has not been sold or assigned and that the same has not become a matter of record.

(b) In cases where the entry has been made a matter of record, in the archives of the county recording officer, there should be added to the form of application the words "except as shown by accompanying evidence," in which event the evidence hereinafter required must be furnished.

(c) A duly executed relinquishment must be furnished by the applicant on a form approved by the Director.

(d) The relinquishment must be witnessed by two persons.

§ 1822.3-3 Recording of reconveyance.

(a) *When not required.* In all cases where patent has been issued, upon an invalid entry, a full reconveyance to the United States of all right and title to the land acquired under the patent and entry must be furnished, which deed must be recorded. If a certificate of the recording officer is produced showing that neither the entry nor the patent has been recorded, it is unnecessary to record the reconveyance in case the patent is surrendered.

(b) *When required.* If, however, the patent cannot be surrendered, or should the entry or patent have been recorded, it is necessary that the proper party or parties execute a full reconveyance to the United States and have the same recorded as indicated in the next following sections.

(c) *When quitclaim deed required.* Where title under an invalid entry or patent has become a matter of record, a duly executed quitclaim deed, relinquishing to the United States all right, title, and claim to the land, acquired under the entry, or patent, must accompany the application for repayment.

(d) *Recording of quitclaim deed.* The deed referred to in the preceding section must be duly recorded, and a certificate must also be produced from the proper recording officer of the county wherein the land is situated, showing that said deed is so recorded and that the records of his office do not exhibit any other conveyance or encumbrance of the title to the land.

(e) *Conformance to State laws.* The reconveyance to the United States must conform in every particular to the laws of the State in which the land is located relative to transfers of real property.

(f) *Reconveyance unnecessary.* If the applicant has also acquired the valid title conveyed by the United States, a reconveyance of the land is unnecessary, but a relinquishment, waiving all claim under the illegal entry, is required, together with corroborative evidence of the facts, preferably an abstract of title and a statement in full in support of the claim for repayment.

§ 1822.3-4 Repayment to heirs, executors, administrators.

(a) Where application is made by heirs, satisfactory proof of heirship is required. This must be the best evidence that can be obtained and must show that the parties applying are the heirs and the only heirs of the deceased.

(b) Proof of heirship should be made in the form of a statement, corroborated by two witnesses, setting forth the date of the death of the intestate; whether the intestate left surviving a husband or wife, as the case may be; the full name and age of such husband or wife; the names and ages of all children; and also state whether there is any issue of a deceased child or children. The statement should set forth all the facts, in order that the Bureau of Land Management may determine who are the legal heirs, in accordance with the laws of descent and distribution of the State where the land is situated.

(c) In case there are minor heirs not under the guardianship of a duly appointed guardian, and the amount to be repaid is $200 or less, the surviving parent may execute the application as the natural guardian of such heirs. Such application should be supplemented with a statement setting forth all the facts in detail.

(d) Where application is made by executors, a certificate of executorship from the probate court must accompany the application.

(e) Where application is made by administrators, the original, or a certified copy, of the letters of administration must be furnished.

§ 1822.3-5 Repayment to assignees.

(a) Those persons are assignees, within the meaning of the statutes authorizing the repayment of purchase money, who purchase the land after the entries thereof are completed and take assignments of the title under such entries prior to complete cancellation thereof, when the entries fail of confirmation for reasons contemplated by the law.

(b) Where applications are made by assignees, the applicants must show their right to repayment by furnishing properly authenticated abstracts of title, or the original deeds or instruments of assignment, or certified copies thereof.

(c) In the place of an abstract of title the applicant may furnish a certificate of the recording officer of the county in which the land is situated, showing all alienations or liens affecting title to the land in connection with the entry upon which the claim for repayment is based.

(d) The applicants must also show that they have not been indemnified by their grantors or assignors for the failure of title, and that title has not been perfected in them by their grantors through other sources.

(e) Where there has been a conveyance of the land and the original purchaser applies for repayment, he must show that he has indemnified his assignee or perfected the title in him through another source, or produce a full reconveyance to himself from the last grantee or assignee.

(f) To construe said statutes so as to recognize the assignment or transfer of the mere claim against the United States for repayment of purchase money, or fees and commissions, disconnected from a sale of the land or attempted transfer of title thereto, would be against the settled policy of the Government and repugnant to section 3477 of the Revised Statutes (31 U.S.C. 203). (2 Lawrence, First Comp. Dec. 264, 266, and 6 Dec. Comp. of the Treasury, 334, 359.)

(g) Assignees of land who purchase after entry are, in general, deemed entitled to receive the repayment when the lands are found to have been erroneously sold by the Government. But this rule does not apply to the repayment of double-minimum excesses. (First Comp. Dec. in case of Adrian B. Owens, Copp's Public Land Laws, 1890, vol. 2, p. 1238.)

§ 1822.3-6 Repayment to mortgagees.

(a) Mortgagees are not assignees within the meaning of the repayment laws, but may become such by pursuing the course suited to the particular case as follows:

(1) Where, after date of entry and prior to cancellation thereof, the land is mortaged and the mortgagee receives a sheriff's deed under foreclosure proceedings, the mortgagee becomes an assignee. (See 193 U.S. 651, 58 L. ed. 830; 28 L.D. 201, 30 L.D. 136.)

(2) Where a mortgage is executed prior to the cancellation of an entry,

and a deed made to the mortgagee after such cancellation, the holder of such deed becomes the assignee. (See 26 L.D. 425.)

(b) In either case, complete evidence must be furnished to establish the applicant's right to repayment by producing the original deeds or instruments, or certified copies thereof showing all transactions, together with certified copies of the court proceedings.

Subpart 1823—Proofs and Testimony

AUTHORITY: R.S. 2478, 43 U.S.C. 1201.

SOURCE: 35 FR 9520, June 13, 1970, unless otherwise noted.

§ 1823.1 Time and place; appearances.

§ 1823.1-1 Time; place; continuance.

Final proofs should in every case be made at the time and place advertised, and before the officer named in the notice, at his regularly established office or place of business, and not elsewhere. Between the hours of 8 a.m. and 6 p.m. on the day advertised the officer named in the notice should call the case for hearing, and should the claimant fail to appear with his witnesses between those hours, or the taking of the proof fail to be completed on that day, the officer should continue the case until the next day, and on that day or any succeeding day should the claimant or his witnesses fail to so appear he should proceed in like manner to continue the case from day to day until the expiration of 10 days from the date advertised, but proof cannot be taken after the expiration of the tenth day. Upon continuing any case in the manner indicated the officer continuing the same should in the most effective way available give notice of such continuance to all interested parties.

§ 1823.1-2 Who may appear.

Protestants, adverse claimants, or other persons desiring to be present at the taking of any proof for the purpose of cross-examining the claimant and his witnesses, or to submit testimony in rebuttal, should be allowed to appear for that purpose on the day advertised, or upon any succeeding day to which the case may be continued. If any person appears for the purpose of filing a formal protest against the acceptance or approval of the proofs or contest against the entry and does nothing more than file same, such protest or contest should be received and forwarded to the manager for his consideration and action.

§ 1823.2 Procedures.

§ 1823.2-1 Examination of claimant and witnesses.

All final proofs should be reduced to writing by or in the presence of and under the supervision of the officer taking them, and in all cases where no representative of the Government appears for the purpose of making cross-examinations the officer taking the proof should use his utmost endeavor and diligence so to examine the entryman and his witnesses as to obtain full, specific, and unevasive answers to all questions propounded on the blank forms prescribed for the taking of such proofs, and in addition to so doing he should make and reduce to writing and forward to the authorized officer with the proof such other and further rigid cross-examination as may be necessary clearly to develop all pertinent and material facts affecting or showing the validity of the entry, the entryman's compliance with the law, and the credibility of the claimant and his witnesses. And, in addition to this, he should inform the authorized officer of any facts not set out in the testimony which in his judgment cast suspicion upon the good faith of the applicant or the validity of the entry.

§ 1823.2-2 Testimony to be taken separate and apart from and not within the hearing of the others.

The testimony of each claimant should be taken separate and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separate and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state in and as a part of the final proof testimony given by them that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others.

§ 1823.2-3 Advice concerning laws and penalties for false swearing.

Officers taking affidavits and testimony should call the attention of parties and witnesses to the laws respecting false swearing and the penalties therefor and inform them of the purpose of the Government to hold all persons to a strict accountability for any statements made by them.

§ 1823.2-4 Fees; costs.

(a) Reducing testimony to writing. On all final proofs made before the officer of the Bureau of Land Management authorized to take proofs, the claimant must pay to the authorized officer the costs of reducing the testimony to writing, as determined by the authorized officer. No proof shall be accepted or approved until such payment has been made.

§ 1823.3 Transmittal of proof papers.

The officer who has taken a proof should, after duly certifying the papers, promptly transmit them to the authorized officer. In no case should the transmittal thereof be left to the claimant.

§ 1823.4 Proof on entries in more than one district.

(a) In submitting proof, the two entries should be treated as one, and the published notice of intention should describe all the land and specify in which land district each part of the claim is located. If the notice is published correctly and the proof is satisfactory, the authorized officer who issued the notice for publication will issue final certificate for the portion within his land district on payment of the testimony fees and payment of the commissions and (if required) the purchase money due for the land in his district. He will then advise the authorized officer of the district wherein the remainder of the claim is located, who will, on receipt of the final commissions and purchase money (if any) due for the part in his district, issue final certificate for that portion without further proof.

(b) Should a proof be rejected by the office from which the notice of intention is issued the appeal or further showing must be filed in the office which rejected the proof.

§ 1823.5 Conduct of officers.

§ 1823.5-1 Prohibited activities.

No officer authorized to take final proofs shall, directly or indirectly, either as agent, attorney, or otherwise, in any manner or by any means cause, aid, encourage, induce, or assist any person wrongfully or illegally to acquire, or attempt to acquire, any title to, interest in, use of, or control over any public lands belonging to the United States.

Subpart 1824—Publication and Posting of Notices

AUTHORITY: 20 Stat. 472; 43 U.S.C. 251.

SOURCE: 35 FR 9521, June 13, 1970, unless otherwise noted.

§ 1824.0-1 Purpose.

The object of the law requiring publication of notices of intended final proof on entries of public lands is to bring to the knowledge and attention of all persons who are or who might be interested in the lands described therein or who have information concerning the illegality or invalidity of the asserted claims thereto, the fact that it is proposed to establish and perfect such claims, to the end that they may interpose any objection they may have, or communicate information possessed by them to the officers of the Bureau of Land Management.

§ 1824.1 Selection of newspaper.

§ 1824.1-1 Qualifications of newspaper.

(a) A notice of intended final proof must be published in a newspaper of established character and of general circulation in the vicinity of the land affected thereby, such paper having a fixed and well-known place of publication. No newspaper shall be deemed a qualified medium of notice unless it shall have been continuously published during an unbroken period of 6 months immediately preceding the publication of the notice, nor unless it shall have applied for and been granted the privilege of transportation in and by the United States mails at the rate provided by law for second-class matter (39 CFR Part 132).

§ 1821.1-2 Discretionary authority of authorized officer; limitations.

(a) The law invests authorized officers with discretion in the selection of newspapers to be the media of notice in such cases as are here referred to, but that discretion is official in character, and not a purely personal and arbitrary power to be exercised without regard for the object of the law by which it is conferred.

(b) In designating papers in which notices of intention to make final proof under the act of March 3, 1879 (20 Stat. 472; 43 U.S.C. 251) shall be published, the authorized officer shall designate only such reputable papers of general circulation nearest the land applied for, the rates of which do not exceed the rates established by State laws for the publication of legal notices.

§ 1821.2 Payment for republication of notice.

(a) The law imposes upon managers the duty of procuring the publication of proper final-proof notices, and charges the claimant with no obligation in that behalf, except that he shall bear and pay the cost of such publication.

(b) Neglect of the duty defined in paragraph (a) of this section, resulting in a requirement of republication, should not visit its penalty upon the claimant. In all such cases, therefore, the entire cost of such republication shall be borne by the Government. If an error is committed by the printer of the paper in which the notice appears, the manager may require such printer to correct his error by publishing the notice anew for the necessary length of time at his own expense, and for his refusal to do so may decline to designate his said paper as an agency of notice in cases thereafter arising.

§ 1821.3 Frequency of publication.

(a) In many cases it is necessary to designate a daily paper in which to publish the notices of intention to submit final proof required to be given by homestead and desert land entrymen as well as the notices of location of other claims.

(b) The expense of publishing such notices for the prescribed period in every issue of a daily paper is often prohibitive, and the object of publication of such notices can be accomplished by a less number of insertions. Therefore, in all cases where the law does not specifically otherwise direct, publication will be made as follows:

(1) Where publication is required for 30 days, if the authorized officer designates a daily paper, the notice should be published in the Wednesday issue for five consecutive weeks; if weekly, in five consecutive issues, and if semiweekly, or triweekly, in any one of the weekly issues for five consecutive weeks.

(2) Where publication is required for 60 days, except in mining cases, if the authorized officer designates a daily paper the notice should be published in the Wednesday issues for nine consecutive issues; if weekly in nine consecutive issues; if semiweekly or triweekly in any one of the weekly issues for nine consecutive weeks.

(c) Publication of notice in mining cases must be made in accordance with § 3862.4-1 of this chapter.

Subpart 1825—Relinquishments

§ 1825.1 When relinquished land becomes subject to further appropriation.

(a) Upon the filing in the proper office of the relinquishment of a homestead claim, the land, if otherwise available, will at once become subject to further application or other appropriation in accordance with the applicable public land laws. A provision to this effect is contained in section 1 of the act of May 14, 1880 (21 Stat. 140; 43 U.S.C. 202).

(b) Upon the filing of a relinquishment of an entry or claim (other than a homestead claim), or a lease, the land will not become subject to further application or other appropriation until the entry, claim or lease has been canceled pursuant to the relinquishment and the fact of the cancellation has been noted on the tract books in the proper office.

(R.S. 2478; 43 U.S.C. 1201)

[35 FR 9521, June 13, 1970]

§ 1825.2 Relinquishment of right-of-way.

The relinquishment of an approved right-of-way may be conditioned upon the approval of a subsequent application, filed as an amendment to the approved right-of-way, or as an independent application, but conflicting in whole or in part with the approved right-of-way. Such a relinquishment will not be accepted and noted on the proper office tract books until action on the subsequent application is taken.

(R.S. 2478; 43 U.S.C. 1201)

[35 FR 9521, June 13, 1970]

Subpart 1826—Reinstatement of Canceled Entries

§ 1826.1 Application for reinstatement.

(a) An application for the reinstatement of a canceled entry, while pending, operates to reserve the land covered thereby from other disposition.

(b) Applications for reinstatement of canceled entries must be filed in the proper office and must be executed by the entryman, his heirs, legal representatives, assigns, or transferees, as the case may require. If made by other than the entryman, such petition for reinstatement must fully set forth the nature and extent of petitioner's interest in the land, how acquired, and the names and addresses of any other person or persons who have or claim an interest therein. All petitions for reinstatement should set forth all facts and state clearly and concisely upon, what grounds reinstatement is urged. Such petition must be signed by the applicant.

(c) Applications for reinstatement of canceled entries executed by agents and attorneys will not be recognized.

(d) Should an application for reinstatement be filed not conforming to the foregoing, the authorized officer will promptly advise the party thereof, calling his attention to the defects and allow 15 days in which to file a proper application.

(e) All applications must be accompanied by an application service fee of $10 which is not returnable.

(R.S. 2478; 43 U.S.C. 1201)

[35 FR 9521, June 13, 1970]

PART 1840—APPEALS PROCEDURES

§ 1840.1 Cross reference.

For special procedural rules applicable to appeals from decisions of Bureau of Land Management officers or of administrative law judges, within the jurisdiction of the Board of Land Appeals, Office of Hearings and Appeals, see Subpart E of Part 4 of this title. Subpart A of Part 4 and all of the general rules in Subpart B of Part 4 of this title not inconsistent with the special rules in Subpart E of Part 4 of this title are also applicable to such appeals procedures.

(R.S. 2478, as amended; 43 U.S.C. 1201)

[36 FR 15119, Aug. 13, 1971]

PART 1850—HEARINGS PROCEDURES

Subpart 1850—Hearing Procedures; General

§ 1850.1 Cross reference.

For special procedural rules applicable to hearings in public lands cases, including hearings under the Federal Range Code for Grazing Districts and hearings in both Government and private contest proceedings, within the jurisdiction of the Board of Land Appeals, Office of Hearings and Appeals, see Subpart E of Part 4 of this title. Subpart A of Part 4 and all of the general rules in Subpart B of Part 4 of this title not inconsistent with the special rules in Subpart E of Part 4 of this title are also applicable to such hearings, contest, and protest procedures.

(R.S. 2478, as amended; 43 U.S.C. 1201)

[36 FR 15119, Aug. 13, 1971]

PART 1860—CONVEYANCING DOCUMENTS

Subpart 1862—Patent Preparation and Issuance

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Subpart 1863—Other Title Conveyances

1863.5 Title transfer to the Government.
1863.5-1 Evidence of title.

Subpart 1862—Patent Preparation and Issuance

AUTHORITY: R.S. 2450, as amended; 43 U.S.C. 1161.

SOURCE: 35 FR 9532, June 13, 1970, unless otherwise noted.

§ 1862.0-3 Authority.

(a) Patents for all grants of land shall be issued under the authority of the Director and signed in the name of the United States (act of June 17, 1948, 62 Stat. 476; 43 U.S.C. 15). The patents shall be recorded in the Bureau of Land Management in books kept for that purpose.

(b) Where a conveyance of land is made to the United States in connection with an application for amendment of a patented entry or entries, for an exchange of lands or for any other purpose except exchange transactions involving lands under the jurisdiction of the Secretary of Agriculture, and the application in connection with which the conveyance was made is thereafter withdrawn or rejected, the Director, Bureau of Land Management is authorized and directed by section 6 of the act of April 28, 1930 (46 Stat. 257; 43 U.S.C. 872), if the deed of conveyance has been recorded, to execute a quit-claim deed of the conveyed land to the party or parties entitled thereto.

§ 1862.1 Contents.

(a) Patents for lands entered or located under general laws can be issued only in the name of the party making the entry or location, or, in case of his death before making proof, to the statutory successor making the proof, provided by law.

(b) The recitals and description of land in patents will in all cases follow the manager's certificate of entry or location, as prescribed by law.

(c) The Bureau of Land Management will cause a new patent to be issued whenever it appears that a patent was regularly issued and the patent record on file in the Bureau of Land Management is imperfect in that it does not contain the name, or the initials, of the signing and the countersigning officers.

§ 1862.2 Delivery.

(a) *Issued on or after August 1, 1950.* When a patent issued on or after August 1, 1950, is ready for delivery it will be transmitted to the patentee or his or her recognized agent or successor in interest.

§ 1862.3 Issuance of supplemental noncoal patents.

(a) The act of Congress approved April 14, 1914 (38 Stat. 335; 30 U.S.C. 82), authorized and directed the Secretary of the Interior:

> In cases where patents for public lands have been issued to entrymen under the provisions of the acts of Congress approved March third, nineteen hundred and nine, and June twenty-second, nineteen hundred and ten, reserving to the United States all coal deposits therein, and lands so patented are subsequently classified as noncoal in character, to issue new or supplemental patents without such reservation.

(b) The act is construed to affect all filings, locations, selections, or entries upon which patent or its equivalent had issued, or might thereafter issue, containing a reservation of the coal in the land to the United States under the act of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81), or the act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83-85), such land having subsequently been finally classified as non-coal character.

§ 1862.4 Patent to be withheld pending report from Forest Service.

In no claim, mineral or non-mineral, shall patent issue for land within a national forest until the Bureau of Land Management is notified by, or ascertains from, the Forest Service, that the claim will not be contested. A claim may be contested by the Forest Service at any time prior to the issuance of patent.

§ 1862.5 Suits to vacate and annul patents.

(a) Suits to vacate and annul patents shall only be brought within 6 years after the date of the issue of such patents (26 Stat. 1093; 43 U.S.C. 1166).

In cases of fraud, the statute has been construed not to commence to run "until discovery of the fraud." Exploration Co., Limited, et al. v. United States (247 U.S. 435, 62 L. ed. 1200).

§ 1862.6 Patent to issue after 2 years from date of manager's final receipt.

(a) The decision of the Supreme Court of the United States in Thomas J. Stockley et al., appellants, v. the United States, decided January 2, 1923 (260 U.S. 532, 67 L. ed. 390) holds that after the lapse of 2 years from the date of the issuance of the "receiver's receipt"[1] upon the final entry of any tract of land under the homestead, or desert-land laws, such entry, entitled to patent under the proviso to section 7 of the act of March 3, 1891 (26 Stat. 1098; 43 U.S.C. 1165), regardless of whether or not the manager's final certificate has issued.

(b) The Supreme Court of the United States in Payne v. U.S. ex rel. Newton (255 U.S. 438, 65 L. ed. 720), decided that Newton was entitled to a patent on his homestead entry under the proviso to section 7 of the act of March 3, 1891, 2 years having elapsed from the date of the issuance of the receiver's final receipt upon final entry, and there being no contest or protest pending against the validity of the entry, but stated that the purpose of the statute was:

> To require that the right to a patent which for 2 years has been evidenced by a receiver's receipt, and at the end of that period stands unchallenged, shall be recognized and given effect by the issue of the patent without further waiting or delay, and thus to transfer from the land officers to the regular judicial tribunals the authority to deal with any subsequent controversy over the validity of the entry, as would be the case if the patent were issued in the absence of the statute.

Cross References: For mineral reservations, see Subpart 2093 of this chapter; for rights-of-way for roadways, see Part 2800 of this chapter.

Subpart 1863—Other Title Conveyances

§ 1863.5 Title transfer to the Government.

(R.S. 2478; 43 U.S.C. 1201)

[35 FR 9533, June 13, 1970]

§ 1863.5-1 Evidence of title.

Evidence of title, when required by the regulations, must be submitted in such form and by such abstracter or company as may be satisfactory to the Bureau of Land Management. A policy of title insurance, or a certificate of title, may be accepted in lieu of an abstract, in proper cases, when issued by a title company. A policy of title insurance when furnished must be free from conditions and stipulations not acceptable to the Department of the Interior. A certificate of title will be accepted only where the certificate is made to the Government, or expressly for its benefit and where the interests of the Government will be sufficiently protected thereby.

(R.S. 2478; 43 U.S.C. 1201)

[35 FR 9533, June 13, 1970]

Cross Reference: For evidence of title in mining cases, see § 3862.1-3 of this chapter.

PART 1870—ADJUDICATION PRINCIPLES AND PROCEDURES

Subpart 1871—Principles

Sec.
1871.0-3 Authority.
1871.1 Equitable adjudication.
1871.1-1 Cases subject to equitable adjudication.

Authority: R.S. 2450; 43 U.S.C. 1161.

Source: 35 FR 9533, June 13, 1970, unless otherwise noted.

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[1] The receipts formerly issued by the receivers are now issued by the managers.

Subpart 1871—Principles

§ 1871.0-3 Authority.

The act of September 20, 1922 (42 Stat. 857; 43 U.S.C. 1161-1163), as modified by section 403 of Reorganization Plan No. 3 of 1946 (60 Stat. 1100), reads as follows:

> SEC. 1161. The Secretary of the Interior, or such officer as he may designate, is authorized to decide upon principles of equity and justice, as recognized in courts of equity, and in accordance with regulations to be approved by the Secretary of the Interior, consistently with such principles, all cases of suspended entries of public lands and of suspended preemption land claims, and to adjudge in what cases patents shall issue upon the same.
>
> SEC. 1162. Every such adjudication shall be approved by the Secretary of the Interior and shall operate only to divest the United States of the title to the land embraced thereby, without prejudice to the rights of conflicting claimants.
>
> SEC. 1163. Where patents have been already issued on entries which are approved by the Secretary of the Interior, the Secretary of the Interior, or such officer as he may designate, upon the canceling of the outstanding patent, is authorized to issue a new patent, on such approval, to the person who made the entry, his heirs or assigns.

§ 1871.1 Equitable adjudication.

§ 1871.1-1 Cases subject to equitable adjudication.

The cases subject to equitable adjudication by the Director, Bureau of Land Management, cover the following:

(a) *Substantial compliance:* All classes of entries in connection with which the law has been substantially complied with and legal notice given, but the necessary citizenship status not acquired, sufficient proof not submitted, or full compliance with law not effected within the period authorized by law, or where the final proof testimony, or affidavits of the entryman or claimant were executed before an officer duly authorized to administer oaths but outside the county or land district, in which the land is situated, and special cases deemed proper by the Director, Bureau of Land Management, where the error or informality is satisfactorily explained as being the result of ignorance, mistake, or some obstacle over which the party had no control, or any other sufficient reason not indicating bad faith there being no lawful adverse claim.

PART 1880—FINANCIAL ASSISTANCE, LOCAL GOVERNMENTS

Subpart 1881—Payments in Lieu of Taxes

Sec.

1881.0-1 Purpose.
1881.0-3 Authority.
1881.0-5 Definitions.
1881.1 Procedures.
1881.1-1 Procedures, general.
1881.1-2 Procedures, Section 1 payments.
1881.1-3 Procedures, Section 3 payments.
1881.1-4 Procedures, Absence of Information.
1881.2 Use of payments.
1881.3 Protests.
1881.4 Appeals.

Subpart 1882—Mineral Development Impact Relief Loans

Sec.

1882.0-1 Purpose.
1882.0-2 Objective.
1882.0-3 Authority.
1882.0-5 Definitions.
1882.1 Loan fund, general.
1882.2 Qualifications.
1882.3 Application procedures.
1882.4 Allocation of funds.
1882.5 Terms and conditions.
1882.5-1 Tenure of loan.
1882.5-2 Interest rate.
1882.5-3 Limitation on amount of loans.
1882.5-4 Loan repayment.
1882.5-5 Security for a loan.
1882.5-6 Use of loan.
1882.5-7 Nondiscrimination.
1882.5-8 Additional terms and conditions.
1882.6 Loan renegotiation.
1882.7 Inspection and audit.

Subpart 1881—Payments in Lieu of Taxes

AUTHORITY: Pub. L. 94-565, 90 Stat. 2662, 31 U.S.C. 1601-1607, unless otherwise noted.

SOURCE: 42 FR 51580, Sept. 29, 1977, unless otherwise noted.

§ 1881.0-1 Purpose.

The regulations establish procedures for making payments in lieu of taxes to units of local government for certain federal lands within their boundaries.

§ 1881.0-3 Authority.

The authority for these regulations is the Act of October 20, 1976, Pub. L. 94-565, 90 Stat. 2662, 31 U.S.C. 1601-1607, hereinafter referred to as "the Act."

§ 1881.0-5 Definitions.

(a) A "government," as that term is used by the Bureau of the Census for general statistical purposes, is an organized entity having substantial autonomy and whose officers are either popularly elected or appointed by publicly elected officials. Other indicia of governmental character include (1) a high degree of responsibility to the public for performance of duties of a governmental nature, (2) power to levy taxes, and (3) power to issue debt paying interest exempt from Federal taxation.

(b) (1) "Unit of general government" means a unit of that type of government which, within its state, is the principal provider of governmental services affecting the use of entitlement lands. Those services of government include (but are not limited to) maintenance of land records, police protection, fire protection, taxation, land use planning, search and rescue and road construction. Ordinarily, a unit of general government will be a county. However, where a smaller unit of government is the principal provider of governmental services affecting the use of public lands within a state, the smaller unit, even though within a larger unit of government, will be considered a general unit of government and will receive payments under the Act. These units of general government will ordinarily be "towns" or townships within states where county governments are nonexistent or nearly nonexistent. The term "unit of general government" also includes:

(i) Governments with the functions of a unit of general government in that state combined with another type of government such as city, township, parish, borough or county, e.g., a city and county as in the City and County of Denver.

(ii) Cities located outside of any of the units of general government for that state and administering functions commonly performed by those units of general government.

(iii) Alaskan boroughs in existence on October 20, 1976, and, beginning October 1, 1978, for purposes of payment under section 3 of the Act, a unit of local government in Alasks located outside of boundaries of an organized borough which acts as the collecting and distributing agency for real property taxes.

(iv) The Governments of the District of Columbia, Puerto Rico, Guam and the Virgin Islands.

(2) The term "unit of general government" excludes single purpose or special purpose units of local government such as school districts or water districts.

(c) (1) "Entitlement lands" are lands owned by the United States which are:

(i) Within the National Park System including wilderness areas;

(ii) Within the National Forest System including wilderness areas and also including those areas of Superior National Forest, Minnesota, set forth in 16 U.S.C. sections 577d and 577d-1 (1970);

(iii) Administered by the Secretary of the Interior through the Bureau of Land Management;

(iv) Water resource projects administered by the Bureau of Reclamation or Corps of Engineers;

(v) Dredge disposal areas administered by the Corps of Engineers.

(vi) Beginning October 1, 1978, lands on which are located semiactive or inactive installations, not including industrial installations, retained by the Army for mobilization purposes and for support of reserve component training; or

(vii) Beginning October 1, 1978, lands designated as "reserve areas", which means any area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary through the Fish and Wildlife Service. For the purpose of these regulations, reserve areas also include lands in Hawaii, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, which were initially administered by the United States through an Act of Congress, Executive Order, Public Land Order or Proclamation of the President and administered, either solely or primarily, by the Secretary through the Service.

(2) "Entitlement lands" do not include:

(i) Lands that were owned or administered by a State or unit of local government and which, at the time title was conveyed to the United States, were exempt from payment of real estate taxes. However, beginning October 1, 1978, this exclusion shall not apply to any entitlement land which is or was acquired by a State or unit of local government from private parties for the purpose of donation of such land to the Federal Government and which is or was donated within eight years of the date of acquisition thereof by the State or unit of local government.

(ii) Any land for which any money was paid to a unit of local government pursuant to the Act of August 28, 1937 (50 Stat. 875) or the Act of May 24, 1939 (53 Stat. 753) in that fiscal year.

(d) "Money transfers" means money or cash payments received by units of local government under the statutes in section 4 of the Act, 31 U.S.C. 1604. The term does not include payments made to a State and distributed by the State directly to a school district or other single or special purpose governmental entities, or payments distributed by the State to the unit of local government which the unit of local government is required by State law to pass on to a school district or other independent single or special purpose governmental entity.

(e) "Authorized officer" means that official within the Bureau of Land Management delegated the authority to carry out the provisions of the Act.

(31 U.S.C. 1601-1607, (92 Stat. 1319, 1321-1322) 92 Stat. 171)

[42 FR 51580, Sept. 29, 1977, as amended at 45 FR 47619, July 15, 1980]

§ 1881.1 Procedures.

§ 1881.1-1 Procedures, general.

(a) The minimum payment shall be $100 to any one unit of local government under both sections 1 and 3 of the Act, in aggregate.

(b) If money actually appropriated by Congress for distribution during any fiscal year is insufficient to provide full payment to each unit of local government, all payments due to eligible recipients in that fiscal year shall be reduced proportionally, to the extent determined necessary by the authorized officer.

§ 1881.1-2 Procedures, Section 1 payments.

(a) The authorized officer shall determine which governments are units of general government eligible to receive payments under section 1 of the Act in accordance with section 6(c) of the Act and the definitions in § 1881.0-5 of these regulations. In resolving questions about the eligibility of any unit of general government and the status of entitlement lands, the authorized officer may consult with the Bureau of the Census, officials of the appropriate State and local government, and officials of the agency administering the entitlement lands.

(b) In order to determine which units of local government are entitled to receive payments under the act, the authorized officer shall obtain the data necessary for making computations pursuant to the formula in section 2 of the Act as follows:

(1) The amount of entitlement lands within the boundaries of each unit of local government as of the last day of the fiscal year preceding the fiscal year for which the payment is to be made and the amount of payments made directly to those governments pursuant to the laws listed in section 4 of the Act shall be obtained from the administering Federal agencies;

(2) The amount of money transfers made by the State to eligible units of local government pursuant to the laws listed in section 4 of the Act shall be obtained from the Governor or his designated officials;

(3) The population of each unit of local government shall be obtained from current Bureau of the Census statistics.

(c) The authorized officer shall compute and certify the amount of payment to be made each unit of local government based on (1) the formula and limitations set forth in section 2 of the Act and (2) the amount of actual appropriations.

(d) No computation will be certified by the authorized officer for payment until the Governor of the State in which the unit of local government is located or his delegate has provided the authorized officer with:

(1) A statement of the amount of all money transfers received during the previous fiscal year[1] by each entitled unit of local government from the State from revenues derived under those laws listed in section 4 of the Act; and

(2) A written certification by a State Auditor, an independent Certified Public Accountant or an independent public accountant, licensed on or before December 31, 1970, that the statements furnished by the Governor or his delegate have been audited in accordance with auditing standards established by the Comptroller General of the United States in *Standards for Audit of Governmental Organizations, Programs, Activities and Functions*, available through Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, and in accordance with the audit guide for payments in lieu of taxes issued by the Department of the Interior. Such audit certifications will be required for statements submitted for the computation of payments authorized by section 1 of the Act for:

(i) Payments to be made for fiscal years beginning on or after October 1, 1979; and

(ii) Prior fiscal year payments as may be required by the Office of the Inspector General, Department of the Interior.

The Authorized Officer may waive the requirement for audit certifications where information contained in statements furnished by the Governor or his delegate is verified by the General Accounting Office, the Office of the Inspector General, or other qualified Federal Officials, or where such verification is determined to be unnecessary.

(e) The Office of the Inspector General, United States Department of the Interior, will provide appropriate assistance to the Director, Bureau of Land Management to facilitate the implementation and administration of the audit requirements specified in paragraph (d)(2) of this section pursuant to the provisions of sections 4 and 6 of the Inspector General Act of 1978 (92 Stat. 1102-1103, and 1104-1105). The Office of the Inspector General will develop appropriate audit guides to be used by State auditors, independent Certified Public Accountants or an independent public accountant, licensed on or before December 31, 1970, for auditing the statements of the Governors or their delegates and submitting audit certifications specified in paragraph (d)(2) of this section. Copies of the audit guides will be furnished to the Governor or his delegate each year. Questions pertaining to the use or application of this guide should be referred to the Office of Inspector General, U.S. Department of the Interior, Washington, D.C. 20240.

(31 U.S.C. 1601-1607, (92 Stat. 1319, 1321-1322), (92 Stat. 171))

[42 FR 51580, Sept. 29, 1977, as amended at 45 FR 47619, July 15, 1980]

§ 1881.1-3 Procedures, Section 3 payments.

(a) The authorized officer shall make payments to qualified units of local government under section 3 of the Act, provided that the administering agencies supply information as follows:

(1) Acreage or interests in land for which payments are authorized within the boundaries of each qualified unit of local government; and

(2) Such other information as may be required to certify payments to qualified units of local government.

(b) Counties receiving payments in excess of $100 shall distribute those payments to affected units of local government and affected school districts, in accordance with section 3 of the Act, within 90 days of the receipt of such payment. Distribution shall be in proportion to the tax revenues assessed and levied by the affected units of local government and school districts in the Federal fiscal year prior to acquisition of the entitlement lands by the Federal Government. The Redwoods Community College District in

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[1] For Fiscal Year 1977, the transition quarter, July 1, 1976 to September 30, 1976, shall be excluded.

California shall be considered an affected school district.

(c) A certification by the county involved that appropriate distribution of funds has been made shall be submitted to the authorized officer within 120 days after the date that payments are received.

(d) In accordance with 106(c) of the Act of March 27, 1978 (92 Stat. 171), payment of the difference, if any, between the amounts actually paid during each of the five fiscal years immediately following the fiscal year in which lands or interests therein were acquired for addition to the Redwoods National Park pursuant to said Act of March 27, 1978, and 1% of the fair market value of such lands and interests therein at the time of their acquisition shall be deferred, unless the amount not paid, or any part of such amount, was not paid due to an insufficiency of appropriated funds, commencing with the sixth fiscal year following acquisition, the amount deferred shall be paid to eligible counties annually in amounts that reflect the limitations of section 3(c)(2) of the Act. Such payments shall be made until the total amount deferred during the first five years has been paid.

(31 U.S.C. 1601-1607, (92 Stat. 1319, 1321-1322), (92 Stat. 171))

[42 FR 51580, Sept. 29, 1977, as amended at 45 FR 47619, July 15, 1980]

§ 1881.1-4 Procedures, Absence of information.

The authorized officer shall certify payments under the Act only to the extent sufficient data is available to determine the amount due the qualified units of local government.

§ 1881.2 Use of payments.

The monies paid to entitled units or local government may be used for any governmental purpose, except as noted in § 1881.1-3(b) of this part.

§ 1881.3 Protests.

(a) Computation of payments shall be based upon Federal land records, population data from the Bureau of the Census, payments made to units of local government through State government under the laws listed in section 4 of the Act as reported by State Governors, Federal payments made directly to units of local government under the laws listed in section 4 of the Act as reported by the disbursing Federal agency.

(b) Any affected unit of local government may protest the results of the computations of its payment to the authorized officer.

(c) Any protesting unit of local government shall submit sufficient evidence to show error in the computations or the data on which the computations are based.

(d) All protests to the authorized officer shall be filed by the first business day of the calendar year following the end of the fiscal year for which the payments were made.

(e) The authorized officer shall consult with the affected unit of local government and the administering agency to resolve conflicts in land records and other data sources.

§ 1881.4 Appeals.

Any affected unit of local government whose protest has been rejected by the authorized officer may appeal to the Interior Board of Land Appeals pursuant to the provisions of 43 CFR Part 4.

Subpart 1882—Mineral Development Impact Relief Loans

AUTHORITY: Sec. 317(c), Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1740) (90 Stat. 2767).

SOURCE: 43 FR 57887, Dec. 11, 1978, unless otherwise noted.

§ 1882.0-1 Purpose.

The purpose of this subpart is to establish procedures to be followed in the implementation of a program under section 317 of the Federal Land Policy and Management Act to make loans to qualified States and their political subdivisions.

§ 1882.0-2 Objective.

The objective of the program is to provide financial relief through loans to those States and their political subdivisions that are experiencing adverse social and economic impacts as a result of the development of Federal mineral deposits leased under the provisions of the Act of February 25, 1920, as amended.

§ 1882.0-3 Authority.

Section 317(c) of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1744), authorizes the Secretary of the Interior to make loans to States and their political subdivisions to relieve social or economic impacts resulting from the development of Federal minerals leased under the Act of February 25, 1920 (30 U.S.C. 181 et seq.).

§ 1882.0-5 Definitions.

As used in this subpart, the term:

(a) "Secretary" means the Secretary of the Interior.

(b) "Director" means the Director, Bureau of Land Management.

(c) "Act" means the Act of February 25, 1920, as amended (30 U.S.C. 181).

§ 1882.1 Loan fund, general.

Funds appropriated by Congress for loans for relief of adverse social and economic impacts resulting from the development of Federal mineral deposits leased and developed under the Act may be loaned to those States and their political subdivisions who qualify under this subpart. Such loans may be used for:

(a) Planning, (b) construction and maintenance of public facilities, and (c) provisions for public services.

§ 1882.2 Qualifications.

(a) Any State receiving payments from the Federal Government under the provisions of section 35 of the Act or any political subdivision of such a State that can document to the satisfaction of the Director that it has suffered or will suffer adverse social and economic impacts as a result of the leasing and development of Federal mineral deposits under the provisions of the Act shall be considered qualified to receive loans made under this subpart.

(b) A loan to a qualified political subdivision of a State receiving payment from the Federal Government under the provisions of section 35 of the Act shall be conditioned upon a showing of proof, satisfactory to the Director, by the political subdivision that it has legal authority to pledge funds payable to the State under section 35 of the Act in sufficient amounts to secure the payment of the loan.

§ 1882.3 Application procedures.

No later than October 1 of the fiscal year in which a loan is to be made, the State or its political subdivision shall submit to the Director a letter signed by the authorized agent requesting a loan. The authorized agent shall furnish proof of authority to act for the State or political subdivision with the application. Such letter shall constitute a formal application for a loan under this subpart and shall contain the following:

(a) The name of the State or political subdivision requesting the loan.

(b) The amount of the loan requested.

(c) The name, address, and position of the person in the State or political subdivision who is to serve as contact on all matters concerning the loan.

(d) A description and documentation of the adverse social and economic impacts suffered as a result of the leasing and development of Federal mineral deposits.

(e) An analysis and documentation of the additional expenses generated as a result of the leasing and development of Federal minerals.

(f) Proposed uses of the funds derived from the loan.

(g) Evidence that the loan and repayment provisions are authorized by State law.

(h) The Director may request any additional information from the applicant that is needed to properly act on the loan application. The applicant shall furnish such additional information in any form acceptable to the applicant and the Director. No loan shall be granted unless such additional information is timely received by the Director.

§ 1882.4 Allocation of funds.

If applications for loans exceed the funds appropriated for such purpose, loans shall be allocated among the States and their political subdivisions in a fair and equitable manner, after consultation with the Governors of the affected States, giving priority to those States and political subdivisions suffering the most severe social and economic impacts. The allocation of funds under this section shall be the final action of the Department of the Interior.

§ 1882.5 Terms and conditions.

§ 1882.5-1 Tenure of loan.

Loans shall be for a period not to exceed 10 years. Loan documents shall include a schedule of repayment showing the amount of the principal and interest due on each installment.

§ 1882.5-2 Interest rate.

Loans shall bear interest at a rate equivalent to the lowest interest rate paid on an issue of at least $1 million of bonds exempt from Federal taxes of the applicant State or any agency thereof within the calendar year immediately preceding the year of the loan. Proof of each rate shall be furnished by an applicant with its application.

§ 1882.5-3 Limitation on amount of loans.

Total outstanding loans under this program for qualified States or their political subdivisions shall not exceed the total amount of the qualified State's projected mineral revenues under the Act for the 10 years following. The total outstanding loans shall be the sum of the unpaid balance on all such loans made to a qualified State and all of its qualified political subdivisions.

§ 1882.5-4 Loan repayment.

Loan repayment shall be by withholding mineral revenues payable to the qualified State for itself or its political subdivisions under the Act until the full amount of the loan and interest have been recovered.

§ 1882.5-5 Security for a loan.

The only security for loans made under this subpart shall be the mineral revenues received by a qualified State or its political subdivisions under the Act. Loans made under this subpart shall not constitute an obligation upon the general property or taxing authority of the qualified recipient.

§ 1882.5-6 Use of loan.

A loan made under this subpart may be used for the non-Federal share of the aggregate cost of any project or program otherwise funded by the Federal Government which requires a non-Federal share for such project or program and which provides planning or public facilities otherwise eligible for assistance under the Act.

§ 1882.5-7 Nondiscrimination.

No person shall, on the grounds of race, color, religion, national origin or sex be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity funded in whole or part with funds made available under this subpart.

§ 1882.5-8 Additional terms and conditions.

The Director may impose any terms and conditions that he determines necessary to assure the achievement of the purpose of the loans made under this subsection.

§ 1882.6 Loan renegotiation.

The Secretary may, upon application of a qualified State or one of its qualified political subdivisions, take any steps he determines necessary and justified by the failure of anticipated mineral development or related revenues tc materialize as expected when the loan was made under this subpart to renegotiate the loan, including restructuring of the loan. All applications submitted under this section shall set forth in detail the basis for the renegotiation of the loan. The renegotiated loan shall meet the requirements of this subpart to the extent possible.

§ 1882.7 Inspection and audit.

Upon receipt of a loan under this subpart, the grantee of the loan shall establish accounts and related records necessary to record the transactions relating to receipt and disposition of such loan. These accounts and related records shall be sufficiently detailed to provide an adequate inspection and audit by the Secretary and the Comptroller General of the United States. The loan funds shall not be commingled with other funds of the recipient.

SUBCHAPTER B—LAND RESOURCE MANAGEMENT (2000)

Group 2000—Land Resource Management; General

PART 2070—DESIGNATION OF AREAS AND SITES

Subpart 2070—Designation of Areas and Sites

Sec.
2070.0-1 Purpose.
2070.0-2 Objective.
2070.0-3 Authority.
2070.0-5 Definitions.

Subpart 2071—Type and Effect of Designations

2071.1 Areas or sites that may be designated.
2071.2 Standards for names.
2071.3 Standards for identification.
2071.4 Effect of designations.

Subpart 2072—Procedures

2072.1 Procedure for designating areas and sites.

AUTHORITY: Sec. 1(b)(1), 78 Stat. 986, R.S. 2478, as amended; 43 U.S.C. 1411, 1201.

SOURCE: 35 FR 9533, June 13, 1970, unless otherwise noted.

Subpart 2070—Designation of Areas and Sites

§ 2070.0-1 Purpose.

This subpart defines the circumstances and procedures under which specific areas of public and other Federal lands exclusively administered by the Secretary of the Interior through the Bureau of Land Management may be designated and identified.

§ 2070.0-2 Objective.

The objective is to provide guidelines for the designation and identification of such areas, and to specify the nature and effect of such designations.

§ 2070.0-3 Authority.

(a) Section 1(b)(1) of the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986, 43 U.S.C. 1411) provides that none of the public or other Federal lands exclusively administered by the Secretary of the Interior through the Bureau of Land Management shall be given a designation or classification unless such designation or classification is authorized by statute or defined in regulations promulgated by the Secretary of the Interior. Classifications are described in Group 2400 of this chapter.

(b) Section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), authorizes the Secretary of the Interior to enforce and carry into execution, by appropriate regulation, every part of the provisions of the public land laws not otherwise specially provided for.

§ 2070.0-5 Definitions.

(a) "Designation" refers to the official identification and naming of a general area or site on public land or other Federal land exclusively administered by the Secretary through the Bureau of Land Management.

Subpart 2071—Type and Effect of Designations

§ 2071.1 Areas or sites that may be designated.

(a) No lands may be designated under the regulations in this subpart unless they are either (1) classified for retention for multiple use management under the regulations and criteria in Group 2400 of this chapter, or (2) withdrawn or reserved under the regulations in Group 2300 of this chapter or other appropriate authority, or (3) given special status by act of Congress such as the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands or lands acquired under the Bankhead-Jones Act and transferred to the Bureau of Land Management for administration.

(b) The following types of areas and sites may be designated under the regulations in this subpart:

(1) *Recreation lands.* A tract of land usually several thousand acres in size where recreation is or is expected to be a major use, and designation will assist the public by making the areas known to them. Some examples of

areas which may be designated as recreation lands follow: Scenic areas of natural beauty such as waterfalls; habitat of interesting, rare or unusual plants or animals; gorges; natural lakes; geological areas of outstanding structural or historical features of the earth's development such as caves, glaciers and other phenomena; roadless areas in which the primitive environment is preserved, sometimes referred to as wilderness, wild, primitive, roadless or virgin areas. Recreation lands will contain one or more of the six classes adopted by the Bureau of Outdoor Recreation. These classes will be identified and described at the time an area is designated. These lands may be defined briefly as follows:

(i) Class I—High-density recreation areas: Areas intensively developed and managed for mass use.

(ii) Class II—General outdoor recreation areas: Areas subject to substantial development for a wide variety of specific recreation uses.

(iii) Class III—Natural environment areas: Varied and interesting land forms, lakes, streams, flora, and fauna within attractive natural settings suitable for recreation in a natural environment and usually in combination with other uses.

(iv) Class IV—Outstanding natural areas: Areas of outstanding scenic splendor, natural wonder, or scientific importance that merit special attention and care in management to insure their preservation in their natural condition. These usually are relatively undisturbed, representative of rare botanical, geological, or zoological characteristics of principal interest for scientific and research purposes.

(v) Class V—Primitive areas: Extensive natural, wild, and undeveloped areas and settings essentially removed from the effects of civilization. Essential characteristics are that the natural environment has not been disturbed by commercial utilization and that the areas are without mechanized transportation.

(vi) Class VI—Historic and cultural sites: Sites of major historical or cultural significance, either national, regional, or local. These are usually small tracts of lands containing significant evidence of American history, such as battlegrounds, mining camps, cemeteries, pioneer trails, and trading posts; or lands which contain significant evidence of prehistoric life such as pictographs, petroglyphs, burial grounds, prehistoric structures, middens, fossils, paleontological remains, and any other evidences of prehistoric life forms.

(2) *Recreation sites.* These are relatively small tracts of land which have value for concentrated and intensive recreation use that usually requires construction and maintenance of public facilities. Recreation sites will contain Class I, II, III, or VI recreation lands under the Bureau of Outdoor Recreation classification system described in paragraph (b)(1) of this section.

(3) *Resource conservation areas.* These are relatively small areas of land which include a variety of resource management activities demonstrating multiple use and sustained yield conservation in action.

(4) *Natural resources experiment and research areas.* These are relatively small areas of land which are used for research or experimental purposes.

(5) *National resource lands.* These are relatively large areas of land, generally more than half of which is managed by the Bureau of Land Management under principles of multiple-use and sustained yield of the several products and services obtainable therefrom, as defined and prescribed in the Classification and Multiple-Use Act of September 19, 1964 (43 U.S.C. 1411-18 (1964)).

(c) The provisions of this part do not apply to designation of areas and trails made pursuant to Part 6290 of this chapter.

[35 FR 9534, June 13, 1970, as amended at 39 FR 13613, Apr. 15, 1974]

§ 2071.2 Standards for names.

(a) To the fullest extent possible, standards established by the Board on Geographic Names will be followed in naming special management areas.

(b) First preference will generally be given to a geographic feature within the site or area if the feature significantly affects the utilization of the natural resources of the area.

(c) No site or area will be named after a living person. An area may be named after a deceased person if that person made a personal contribution to the utilization or management of the natural resources in the area.

(d) For public identification purposes names of sites and areas designated in accordance with the regulations in this subpart shall be brief and descriptive.

§ 2071.3 Standards for identification.

Lands designated in accordance with the regulations in this subpart may be—

(a) Posted by means of entrance and boundary signs sufficient to make the lands and the reason for posting known on the ground.

(b) Identified on maps or diagrams sufficient to make the existence and locations known to the general public.

§ 2071.4 Effect of designations.

(a) Designation under this section will have no effect upon established use or management of the areas or sites involved.

(b) If changes in the status of the land or use arrangements are desired, such changes must be accomplished by—

(1) Segregation under the Classification and Multiple Use Act regulations in Group 2400 of this chapter:

(2) Withdrawal or reservation under regulations in Group 2300 of this chapter or other appropriate authority;

(3) Modification of existing use arrangements, to the extent authorized by existing authority and regulations, such as Subchapter D—Range Management (4000) of this chapter for livestock grazing.

[35 FR 9534, June 13, 1970]

Subpart 2072—Procedures

§ 2072.1 Procedure for designating areas and sites.

The sites and areas defined under § 2071.1 may be designated, named, and posted by the authorized officer, after consultation and coordination with the authorized users and any other parties, organizations, and units of government which may have an interest in such action.

[35 FR 9534, June 13, 1970]

PART 2090—SPECIAL LAWS AND RULES

Subpart 2091—Segregation of Lands

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Subpart 2091—Segregation of Lands

AUTHORITY: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

SOURCE: 35 FR 9535, June 13, 1970, unless otherwise noted.

§ 2091.0-7 Cross references.

(a) For rule of priority in the case of mineral permits and leases see § 2093.0-5.

(b) For enlarged homestead see Subpart 2514.

(c) For Indian allotment see Subpart 2530.

(d) For airports see Subpart 2911.

(e) For Carey Act lands see Subpart 2620.

(f) For stock-driveway withdrawal see Subpart 2313.

(g) For withdrawals and reservations see Subpart 2300.

(h) For small tracts see Subpart 2730.

(i) For recreation and public purposes see Subpart 2740.

(j) For exchanges see Subpart 2200.

(k) For native allotments see Subpart 2530.

(l) For Alaska Public Sale Act see Subpart 2771.

§ 2091.1 Rejection of applications.

Except where regulations provide otherwise, all applications must be accepted for filing. However, applications which are accepted for filing must be rejected and cannot be held pending possible future availability of the land or interests in land, when approval of the application is prevented by:

(a) Withdrawal or reservation of lands; except that this does not prevent the filing of applications by village and regional corporations under 43 CFR Parts 2561 and 2652 for public lands withdrawn under section 11(a)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1601), unless the lands are withdrawn for the national park system or are withdrawn or reserved for national defense purposes.

(b) An allowed entry or selection of record;

(c) An irrevocable lease which grants the lessee exclusive use of the land;

(d) Classification under appropriate law;

(e) The fact that for any reason the land has not been made subject, or restored, to the operation of the public land laws.

[35 FR 9535, June 13, 1970, as amended at 39 FR 34542, Sept. 26, 1974]

§ 2091.2 Upon application for.

§ 2091.2-1 Indian allotment.

Where an allotment application is approved by the authorized officer, it operates as a segregation of the land,

and subsequent applications for the same land will be rejected.

§ 2091.2-2 Airports.

An application for a lease of not exceeding 2,560 acres of public lands for a public aviation field under sections 1, 2, and 3 of the act of May 24, 1928 (45 Stat. 728, 729; 49 U.S.C. 211-213) as amended, will operate as a segregation of the lands described therein from the time such application is filed in the proper office.

§ 2091.2-6 State indemnity selections.

The filing of an application for selection under the provisions of Subpart 2621 of this title shall segregate the lands described in the application from settlement, sale, locations or entry under the public land laws, including the mining laws, but not the mineral leasing laws or the Geothermal Steam Act. The authorized officer shall promptly publish in the FEDERAL REGISTER a notice of the filing of the selection application. Any other type of application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant. The segregative effect of the selection application on the public lands shall terminate upon issuance of a document of conveyance to such lands, or upon publication in the FEDERAL REGISTER of a notice of termination of the segregation or the expiration of 2 years from the date of the filing of the selection application, whichever occurs first. However, where administrative appeal or review actions have been sought pursuant to Part 4 or Subpart 2450 of this title, the segregative period shall continue in effect until publication of a notice of termination of the segregation in the FEDERAL REGISTER.

(Secs. 2275 and 2276, Revised Statutes, as amended (43 U.S.C. 851, 852))

[46 FR 38508, July 28, 1981]

§ 2091.3 Upon classification.

§ 2091.3-1 Under Small Tract Act.

Lands classified under the act of June 1, 1938, as amended, will be segregated from all appropriations, including locations under the mining laws, except as provided in the order of classification or in any modification or revision thereof.

§ 2091.3-2 Under the Recreation and Public Purposes Act.

(a) Lands classified under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869), are segregated from all appropriations, including locations under the mining laws, except as provided in the order of classification or amendment thereof.

(b) *Termination.* Classifications made for recreation and public purpose on the motion of the Government for which no application is filed within 18 months after issuance will be vacated and the land restored to its former status.

[35 FR 9535, June 13, 1970, as amended at 41 FR 1598, Jan. 9, 1976]

§ 2091.4 Lands occupied as townsites.

Public lands settled upon and occupied as a townsite are segregated from entry and may be entered under sections 2387 to 2389, Revised Statutes (43 U.S.C. 718-720), subject to the restrictions contained in sections 2386 and 2391 to 2393, inclusive, Revised Statutes (43 U.S.C. 717, 721-723).

§ 2091.5 Lands occupied by Indians.

Authorized officers will ascertain by any means in their power whether any public lands in their districts are occupied by Indians and the location of their improvements, and will suspend all applications made by others than the Indian occupants, upon lands in the possession of Indians who have made improvements of any value whatever thereon.

§ 2091.6 Alaska.

§ 2091.6-1 Lands under grazing leases; Act of March 1, 1927.

(a) *Determinations involving nonmineral entries.* Lands leased under the act are not subject to settlement, location, and acquisition under the nonmineral public land laws applicable to Alaska unless and until the authorized officer of the Bureau of Land Management determines that the grazing lease should be cancelled or reduced in order to permit, in the public interest and without undue interference with the grazing operations, the appropriate development and utilization of the lands § 4131.2-7 of this chapter, and that the lands are suitable for and otherwise subject to the intended settlement, location, entry or acquisition. An application on the appropriate form or a notice on a form approved by the Director if applicable to the class of entry contemplated, will be accepted and treated as a petition for determination. Upon such determination and after not less than 30 days' notice thereof to the lessee the grazing lease may be cancelled or reduced to permit the settlement, location entry or other acquisition of the lands so eliminated from the lease, and the petitioner will be accorded a preference right to settle upon or enter the lands in accordance with the determination.

(b) *Disposition of minerals.* Unless otherwise withdrawn therefrom, lands leased under the act are subject to disposition under the mineral leasing laws and to mineral prospecting, location, and purchase under the mining laws, in accordance with the applicable regulations of Subparts 3800 and 3826 of this chapter.

(44 Stat. 1452; 43 U.S.C. 316, 316a, 316c)

§ 2091.6-2 Lands subject to reindeer grazing; Act of September 1, 1937.

(a) *Settlement, location, acquisition.* (1) Lands included in grazing permits under the act are subject to settlement, location, and acquisition under the nonmineral public land laws applicable to the State of Alaska.

(2) Upon settlement, location or entry of any lands included within a reindeer grazing permit, the permittee shall be notified of the settlement, location or entry, and the permitted area shall be reduced by the area involved in the settlement, location or entry.

(b) *Disposition of minerals.* Unless otherwise withdrawn therefrom, lands included in grazing permits under the act are subject to disposition under the mineral leasing laws and to mineral prospecting, location, and purchase under the mining laws, in accordance with the applicable regulations of Subparts 3800 and 3826 of this chapter.

(50 Stat. 902; 48 U.S.C. 250, 250a-250p)

§ 2091.6-3 Occupied lands.

Lands occupied by Indians, Aleuts, and Eskimos in good faith are not subject to entry or appropriation by others.

§ 2091.6-4 State selections.

Lands desired by the State under the regulations Subpart 2600 will be segregated from all appropriations based upon application or settlement and location, including locations under the mining laws, when the State files its application for selection in the proper office properly describing the lands as provided in § 2627.3(c). Such segregation will automatically terminate unless the State publishes first notice as provided by § 2627.4(c) within 60 days of service of such notice by the appropriate officer of the Bureau of Land Management.

§ 2091.6-5 Application for native allotment.

The filing of an acceptable application for a Native allotment will segregate the lands. Thereafter, subsequent conflicting applications for such lands will be rejected, except when the conflicting application is made for the conveyance of lands pursuant to any provision of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et. seq.). When there is more than one Native allotment application covering the same tract of land, a determination will be made as to which applicant has fulfilled the requirements of the act and the regulations thereunder.

[39 FR 34542, Sept. 26, 1974]

Subpart 2093—Minerals (Nonmineral Entries on Mineral Lands)

AUTHORITY: R.S. 2478; sec. 32, 41 Stat. 450; 43 U.S.C. 1201, 30 U.S.C. 189, unless otherwise noted.

SOURCE: 35 FR 9536, June 13, 1970, unless otherwise noted.

§ 2093.0-3 Authority.

(a) Section 29 of the Mineral Leasing Act of February 25, 1920 (41 Stat. 449;

30 U.S.C. 186) and the act of March 4, 1933 (47 Stat. 1570; 30 U.S.C. 124) grant the Secretary of the Interior complete discretion to determine whether the surface of public lands embraced in mineral permits or leases, or in applications for such permits or leases, or classified, withdrawn, or reported as valuable for any leasable mineral, or lying within the geologic structure of a field, should be disposed of. Accordingly, where a nonmineral application is filed, in the continental United States, for any of such described lands, the nonmineral application may be allowed only if it is determined by the proper officer, with the concurrence of the Director, Geological Survey, that the disposal of the lands under the nonmineral application will not unreasonably interfere with current or contemplated operations under the Mineral Leasing Acts. Appeals from any decision of the Director, Bureau of Land Management, or other officer, may be taken by any affected party in accordance with Parts 1840 and 1850 of this chapter.

§ 2093.0-5 Definitions.

As used in §§ 2093.0-3 to 2093.0-7 inclusive, a mineral claim is "prior" where an application for a mineral permit or lease has been filed before either the filing of a complete nonmineral application for part or all of the same land, or before the classification of that land for the purposes requested by that nonmineral applicant: *Provided*, That the nonmineral application is not either for:

(a) A State exchange under section 8 of the Taylor Grazing Act (48 Stat. 1269; 43 U.S.C. 315g), as amended, filed prior to such mineral claim; or

(b) A reclamation homestead under the Reclamation Act of June 17, 1902 (32 Stat. 388, 43 U.S.C. 372 et seq.) for lands applied for by a mineral claimant under the Leasing Act after withdrawal for reclamation purposes.

§ 2093.0-6 Notations required.

(a) *On notice of allowance.* Whenever the mineral claim is "prior", the following notation will be made in the notice of allowance of the nonmineral application, as well as on the original copy of that nonmineral application:

> This land is subject to the right of any prior mineral permittee or lessee, or of any prior applicant for a mineral permit or lease, to occupy and use so much of the surface of the lands as may be reasonably required for mineral leasing operations, without liability to the nonmineral entryman or patentee for crop and improvement damages resulting from such mineral activity.

(b) *On final certificate.* (1) Whenever a nonmineral application, which is affected by the notation described in paragraph (a) of this section, proceeds to issuance of patent, and at the time of such issuance there is outstanding a mineral lease, permit, or application therefor, based on a "prior", mineral claim, such final certificate and patent will indicate that they are subject to the act of March 4, 1933 (47 Stat. 1570; 30 U.S.C. 124).

(2) Such final certificate and patent will indicate that they are also subject to the provisions and limitations of section 29, act of February 25, 1920 (41 Stat. 449; 30 U.S.C. 186), if, when the final certificate or patent issues, there is outstanding a mineral lease or permit based on a "prior" mineral claim.

§ 2093.0-7 Compensation for damages.

In any case where there is no "prior" mineral claim, any person obtaining authority to prospect for, mine or remove the reserved mineral deposits will be liable to the entryman, selector or patentee of the surface for any damages to crops or improvements which may result from his prospecting or mining operations on the land.

§ 2093.1 Surface rights of nonmineral entrymen.

§ 2093.1-1 Act of March 3, 1909.

(a) The act of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81) protects persons who in good faith, have located, selected, or entered, under nonmineral laws, public lands which are, after such location, selection, or entry, classified, claimed, or reported as being valuable for coal by providing a means whereby such persons may at their election, retain the lands located, selected, or entered, subject to the right of the Government to the coal therein.

§ 2093.1-2 Election to take patent with reservation to United States of the coal deposits.

All persons who, in good faith, locate, select, or enter, under the nonmineral laws, lands which are, subsequently to the date of such location, selection, or entry, classified, claimed, or reported as being valuable for coal, may elect, upon making satisfactory proof of compliance with the laws under which they claim, to receive patents upon their location, selection, or entry, as the case may be, such patents to contain a reservation to the United States of all coal in the lands and the right of the United States, or anyone authorized by it, to prospect for, mine, and remove the coal in accordance with the conditions and limitations imposed by the act; or may decline to elect to receive patent with such reservation, in which event proceedings shall be had as provided for in § 2093.1-3 (a) and (b).

§ 2093.1-3 Procedures.

(a) *Where final proof has not been submitted.* (1) Authorized officers will promptly advise each nonmineral claimant to land which, subsequent to location, selection, or entry, has been classified, claimed, or reported as being valuable for coal, that at the time of applying for notice of intention to submit final proof he must, in writing, state whether he elects to receive a patent containing the reservation prescribed by the act of March 3, 1909.

(2) In the event of election to receive such a patent, no further inquiry will be necessary respecting the coal character of the land.

(3) In the event the claimant declines to elect to receive such patent, evidence will be received at the time of making final proof for the purpose of determining whether the lands are chiefly valuable for coal; and the entryman, locator, or selector will be entitled to a patent without reservation, unless it shall be shown that the land is chiefly valuable for coal.

(4) The claimant may, after determination at final proof that the lands are chiefly valuable for coal, elect to receive patent with the statutory reservation, provided, of course, proof of compliance with the law in other respects is satisfactory.

(b) *When final proof has been submitted.* Where satisfactory final proof has been made for lands entered under the nonmineral laws, the claimant will be entitled to a patent without reservation, except in those cases where the Government is in possession of sufficient evidence to justify the belief that the land is, and was before making final proof, known to be chiefly valuable for coal, in which case hearing will be ordered. If, at said hearing, it is proven that the land is chiefly valuable for coal, the entry shall be canceled, unless the claimant shall prove that he was at the time of the initiation of his claim in good faith endeavoring to secure the land under the nonmineral laws, and not because of its coal character, in which event he shall be permitted to elect to receive patent with the reservations prescribed in the statute. If it is not shown that the land is chiefly valuable for coal, the claimant shall be entitled to patent without reservation.

§ 2093.2 Agricultural entries on coal lands.

§ 2093.2-1 Acts of June 22, 1910, and April 30, 1912.

(a) Section 1 of the act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83), provides that the unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, shall be subject to appropriate entry under the homestead laws, the desert land law, and to withdrawal under the act approved June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 et seq.), known as the Reclamation Act, whenever such entries, selections, or withdrawals shall be made with a view of obtaining or passing title, with a reservation to the United States of the coal in such lands and of the right to prospect for, mine, and remove the same; and that all homestead entries made thereunder shall be subject to the conditions, as to residence and cultivation, of entries provided for under the act approved February 19, 1909 (35 Stat. 639; 43 U.S.C. 218), entitled "An act to provide for an enlarged homestead."

The act of February 19, 1909, was amended by the act of June 6, 1912 (37 Stat. 123; 43 U.S.C. 164, 169, 218).

(b) Section 2 of the act (36 Stat. 584; 30 U.S.C. 84) provides that any person desiring to make entry under the homestead laws or the desert-land law, and the Secretary of the Interior in withdrawing under the Reclamation Act lands classified as coal lands, or valuable for coal, with a view to securing or passing title to the same in accordance with the provisions of said acts, shall state in the application for entry, selection, or notice of withdrawal that the same is made in accordance with and subject to the provisions of this act.

(c) The act of April 30, 1912 (37 Stat. 105; 30 U.S.C. 90) authorizes the selection of unreserved public lands of the United States, exclusive of Alaska, which have been withdrawn or classified as coal lands, or are valuable for coal, by the several states within whose limits the lands are situated, under grants made by Congress, and the offering at public sale, in the discretion of the Secretary of the Interior, of isolated or disconnected tracts of coal lands, which are so withdrawn, classified or valuable, with a reservation of the coal deposits to the United States and otherwise subject to all the conditions and limitations of the act of June 22, 1910.

CROSS REFERENCE: See Parts 2510, 2520, and 2620 for additional information on this subject.

§ 2093.2-2 Lands on which entries may be made.

(a) The act of June 22, 1910 applies to unreserved public lands in the United States, exclusive of the State of Alaska, which have been withdrawn as coal lands and not released therefrom, or which have been classified as coal lands or which are valuable for coal, though not withdrawn or classified.

(b) The Secretary of the Interior in withdrawing, under the Reclamation Act, lands classified as coal lands, or valuable for coal, with a view to securing or passing title to the same in accordance with the provisions of said acts, will state in the notice of withdrawal that the same is made in accordance with and subject to the provisions and reservations of the act of June 22, 1910.

§ 2093.2-3 Procedures.

(a) *Applications.* (1) The last proviso to section 3 of the act of June 22, 1910 (36 Stat. 584; 30 U.S.C. 85) provides that nothing in the act contained shall be held to deny or abridge the right to present and have prompt consideration of applications to locate, enter, or select, under the land laws of the United States, lands which have been classified as coal lands with a view of disproving such classification and securing a patent without reservation.

(2) Entries and selections under the provisions of the act of June 22, 1910, must have noted across the face of the application for entry or selection, before such application for entry or selection is signed by the applicant and presented to the authorized officer, the following:

> Application made in accordance with and subject to the provisions and reservations of the act of June 22, 1910 (36 Stat. 583).

(b) *Hearing.* Except in the case of those who present applications under section 2 of the act (36 Stat. 584; 30 U.S.C. 84), the authorized officer will advise any person presenting a nonmineral application or filing for lands classified as coal lands that he will be allowed 30 days in which to submit evidence, preferably the statements of experts or practical miners, that the land is in fact not coal in character, together with an application that the same be reclassified, and that in the event of failure to furnish said evidence within the time specified the application will be rejected. If upon the showing made, and such other inquiry as may be deemed proper, the land is classified as agricultural land, the nonmineral application, in the absence of other objections, will be allowed. If reclassification be denied, the applicant may, within 30 days from receipt of notice, apply for a hearing, at which he may be afforded an opportunity for showing that the classification is improper, in which event he must assume the burden of proof. If he should fail to apply for a hearing within the time allowed, his application to enter or file will be finally rejected. The rejection of such application, however, does not preclude the person from filing another application pursuant to section 2 of the act.

§ 2093.2-4 Patent with reservation of coal deposits; disposal of coal deposits.

There will be incorporated in patents issued to nonmineral claimants under this act the following:

> Excepting and reserving, however, to the United States all the coal in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove the coal from the same upon compliance with the conditions and subject to the provisions and limitations of the act of June 22, 1910 (36 Stat. 583).

§ 2093.3 Agriculture entry of lands withdrawn, classified or valuable for minerals.

§ 2093.3-1 Acts of July 17, 1914, and March 4, 1933.

(a) Section 1 of the act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121), as amended, authorizes the appropriation, location, selection, entry or purchase under the nonmineral land laws of the United States, if otherwise available, of lands withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, and sodium and sulphur under 30 U.S.C. 124, or which are valuable for such deposits, whenever such lands are sought with a view of obtaining or passing title with a reservation to the United States of the deposits on account of which the lands were withdrawn, classified, or reported as valuable, together with the right to prospect for, mine, and remove the same. Any form of appropriation under the proper applicable nonmineral land laws is authorized, with a reservation of the minerals as specified, to the same extent as if no withdrawal or classification had been made.

(b) The term "person" used in this act will be interpreted as covering a State (see ex parte, Utah, 38 L.D. 245), or other corporation, or an association when duly qualified.

(c) Under the proviso in section 2 of the act (38 Stat. 509; 30 U.S.C. 122) applications for land, either withdrawn or classified, may be presented with a view of proving that the lands applied for, if withdrawn, are not of the character intended to be included in the withdrawal, or, if classified, of disproving the classification and securing patent free from reservations; also, claimants for lands withdrawn or classified for the specified minerals subsequent to location, selection, entry, or purchase have the privilege of showing at any time before final entry, purchase, or approval of selection or location that the lands sought are in fact nonmineral in character.

(d) Under the act of March 4, 1933 (47 Stat. 1570; 30 U.S.C. 124), lands withdrawn, classified, or reported as valuable for sodium and/or sulphur are subject to entry, filing, or selection, if otherwise available, and subject to the reservations, provisions, limitations and conditions of the act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121-123), sulphur lands being limited to the States of Louisiana and New Mexico, pursuant to the act of July 16, 1932 (47 Stat. 701; 30 U.S.C. 271, 276).

(Interprets or applies sec. 1, 36 Stat. 583, sec. 1, 38 Stat. 509, as amended; 138; 30 U.S.C. 83, 121)

§ 2093.3-2 Lands to which applicable.

The act of July 17, 1914 is general and comprehensive and operates in all the States containing public lands of the character specified. It does not apply to lands in the State of Alaska, or to lands in the United States which for other reasons are not available or which, in other words, are not subject to entry. This statute fully covers the field included in the special acts of August 24, 1912 (37 Stat. 496), providing for certain agricultural entries and selections on oil and gas lands in the State of Utah, and of February 27, 1913 (37 Stat. 687), authorizing selections by the State of Idaho of phosphate and oil lands in that State. This broad and general act supersedes and displaces said special laws, and by implication works their repeal. Therefore, all entries, selections, or locations of lands of the character described in those special statutes made in the States mentioned on or after date of this general act, July 17, 1914, will be treated as within the scope of the latter act, and will be adjudicated thereunder. Also, all such entries, selections, or locations made under those special acts prior to, and not perfected at, that date will be carried to completion, approved, and patented, if at all, under the general act.

§ 2093.3-3 Procedures.

(a) *General.* The act of July 17, 1914 in many respects resembles that of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81), which provides for the protection of the surface rights of entrymen upon lands subsequently classified, claimed, or reported as coal lands, and also, that of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83-85), authorizing certain forms of agricultural entries and selections on withdrawn or classified coal lands. The general instructions under these acts as set forth in §§ 2093.1 to 2093.2 may be followed, so far as applicable, in matters of practice and procedure.

(b) *Notations on applications and in orders of withdrawal.* (1) All applications to locate, select, enter, or purchase lands under the act of July 17, 1914, before being accepted and filed by the authorized officer, must have written, stamped, or printed upon their face the following:

> Application made in accordance with, and subject to the provisions and reservations of the act of July 17, 1914 (38 Stat. 509).

(2) Orders of withdrawal under the Reclamation Act of lands withdrawn, classified, or reported as valuable for the specified minerals with a view to passing title to the same in accordance with the terms of this act, will state that such withdrawal is made in accordance with and subject to the provisions and reservations of the act of July 17, 1914.

(c) *Notice to entryman; action by entryman.* (1) Where the Geological Survey reports that land embraced in a nonmineral entry or claim on which final proof has not been submitted or which has not been perfected is in an area in which valuable deposits of oil and gas may occur because of the absence of reliable evidence that the land is affected by geological structure unfavorable to oil and gas accumulation, the entryman or claimant will be notified thereof and allowed a reasonable time to apply for reclassification of the land as nonmineral, submitting a showing therewith, and to apply for a hearing in event reclassification is denied, or to appeal. He must be advised that, if a hearing is ordered, the burden of proof will be upon him, and also that, if he shall fail to take one of the actions indicated, his entry or claim and any patent issued pursuant thereto will be impressed with a reservation of oil and gas to the United States.

(2) In a case where acceptable final proof has been submitted, or a claim has been perfected, and the Geological Survey thereafter makes report, as in the above or similar form, such report will not be relied upon as basis for a mineral reservation unless the Government is prepared to assume the burden of proving, prima facie, that the land was known to be of mineral character, at the date of acceptable final proof or when the claim was completed, according to the established criteria for determining mineral from nonmineral lands, among which may be those recognized by the Supreme Court in the case of United States v. Southern Pacific Company et al. (251 U.S. 1, 64 L. ed. 97). If the Government is thus prepared to assume such burden of proof, the Bureau of Land Management will notify the entryman of the mineral classification and that a hearing will be ordered if he manifests disagreement with the classification within a reasonable period. The entryman or claimant will be advised that in the event hearing is had, the burden of proof will be upon the Government; also that, if he shall fail to make answer within the time allowed, the entry or claim and any patent issued pursuant thereto will be impressed with a reservation of oil or gas to the United States.

(d) *Applications to disprove classification of land; hearing thereon.* (1) (i) The proviso to section 2 of the act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 122), allows any qualified person to present an application to locate, select, enter, or purchase, under the land laws of the United States, lands which are withdrawn or classified as phosphate, nitrate, potash, oil, gas, or asphaltic minerals, with a view to obtaining a patent thereunder without reservation. An applicant under this proviso must submit with his application a request for a classification of the land as nonmineral, filing therewith a showing, preferably the statements of experts or practical miners, of the facts upon which is founded the knowledge or belief that the land applied for is not valuable for the mineral on account of which it was withdrawn or classified.

(ii) Applications to locate, select, enter, or purchase lands so withdrawn or classified, which are not filed under the provisions of section 1 of the act (38 Stat. 509; 30 U.S.C. 121), and are not accompanied by request for classification as nonmineral of the land applied for, and the evidence required herein to be filed with such request, will be rejected by the authorized officer and the applicant allowed 30 days from notice within which to amend his application to take a limited patent for the land in accordance with and subject to the provisions of the act, or to file request for classification thereof as nonmineral, accompanied by the necessary evidence.

(iii) If upon the showing made, and such other inquiry as may be deemed proper, a restoration of the land, where withdrawn, be secured, or a reclassification as nonmineral be made, where the land has been classified, the nonmineral application, in the absence of other objection, will be allowed.

(iv) If the application be denied the applicant may, within 30 days from notice of such denial, apply to the land office for a hearing to disprove the classification. When a hearing is applied for, the authorized officer will proceed therewith under Parts 1840 and 1850 of this chapter. If the applicant fails to apply for a hearing within the time allowed, the application to locate, select, enter or purchase will be finally rejected.

(v) The rejection of the application, however, will not preclude the applicant from filing application to locate, select, enter or purchase the land in accordance with and subject to the provisions and reservations of said act.

(2) (i) Under this proviso, persons who have located, entered, selected, or purchased lands subsequently withdrawn or classified as valuable for said mineral deposits, are allowed the privilege of showing, at any time before final entry, purchase, or approval of selection or location, that the lands are in fact nonmineral in character.

(ii) Claimants to whom this provision is applicable may, therefore, file in the proper office application for a classification of the land as nonmineral, together with the evidence prescribed herein to be filed by an original applicant with his request for classification. If the application be denied, the claimant will be allowed 30 days from notice of such denial within which to make application to the office for a hearing to establish the nonmineral character of the land. When a hearing is applied for the authorized officer will proceed therewith under Parts 1840 and 1850 of this chapter.

(e) *Burden of proof.* (1) Where application is made to enter, locate, or select lands withdrawn or classified as valuable for or on account of any of the minerals specified in the act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121-123) as supplemented by the act of March 4, 1933 (47 Stat. 1570; 30 U.S.C. 124), the burden of proof to show that said lands are not of the character of those intended to be withdrawn or that the classification as such was and is erroneous and improper in point of fact will rest upon and be borne by the applicant in the event that he shall undertake to establish, at a hearing ordered and held for that purpose, the truth of the allegations made by him in that behalf.

(2) A withdrawal or classification will be deemed prima facie evidence of the character of the land covered thereby for the purposes of this act. Where any nonmineral application to select, locate, enter, or purchase has preceded the withdrawal or classification and is incomplete and unperfected at such date, the claimant, not then having obtained a vested right in the land, must take patent with a reservation or sustain the burden of showing at a hearing, if one be ordered, that the land is in fact nonmineral in character and therefore erroneously classified or not of the character intended

to be included in the withdrawal. Where the agricultural claimant has completed and perfected his claim and becomes possessed of a vested right in the land, which subsequent thereto is withdrawn or classified, the burden will rest upon the Government to show that the land is in fact mineral in character and was so known at the date of final completion and perfection of the claim. (See Charles W. Pelham (39 L.D. 201).)

§ 2093.3-4 Patents.

(a) *Patent with reservation.* Under section 3 of the act of July 17, 1914 (38 Stat. 510; 30 U.S.C. 123), any person who shall apply for lands which are subsequently withdrawn, classified or reported as being valuable for the specified minerals, and which are otherwise available may upon application therefor, and the making of satisfactory proof, receive a patent with a reservation. In this particular the statute is quite similar to that of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81), and the disposition of such cases will follow the practice under that act insofar as the same is applicable.

(b) *Application for patent.* Nonmineral claimants who are or may be affected by withdrawals or classifications made or which shall be made, subsequent to their locations, selections, entries, or purchases, upon submission of satisfactory proof of compliance with the laws under which they claim, unless the withdrawal be revoked or the classification set aside prior to the issuance of patent, or unless they show that the lands embraced in their claims are in fact nonmineral, shall be entitled to the patent authorized to be issued by section 3 of the act of July 17, 1914 (38 Stat. 510; 30 U.S.C. 123) upon the filing of an application therefor. Such claimant will be notified of his right to such a patent, and upon failure to file within 30 days his application therefor or to apply for a classification of the land as nonmineral, the entry will be canceled.

(c) *Reservations in patents.* There will be incorporated in patents issued to nonmineral claimants under this act the following:

> Excepting and reserving, however, to the United States all the [deposit on account of which the lands are withdrawn, classified, or reported as valuable—phosphate, oil, or other mineral, as the case may be] in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the act of July 17, 1914 (38 Stat. 509).

§ 2093.3-5 Disposition of reserved deposits; protection of surface claimant.

The act of July 17, 1914, provides that the deposits reserved in agricultural patents issued thereunder shall be "subject to disposal by the United States only as shall be hereafter expressly directed by law." Provisions are made in the act for the protection of the surface owner against damage to his crops and improvements on the land by reason of prospecting for, mining, and removing such reserved mineral deposits.

§ 2093.4 Entries on coal, oil, and gas lands in Alaska.

§ 2093.4-1 Acts of March 8, 1922, and May 17, 1906, as amended.

(a) The act of March 8, 1922 (42 Stat. 415), as amended August 23, 1958 (72 Stat. 730; 48 U.S.C. 376, 377), referred to in §§ 2094.4-1 to 2093.4-3 as "the act of 1922," provides that:

(1) In Alaska, homestead, including soldiers' additional homestead, homesite, headquarters site, and trade and manufacturing site claims may be initiated by actual settlers on public lands which are known to contain workable coal, oil, or gas deposits or that may be valuable for the coal, oil, or gas contained therein, and which are not otherwise reserved or withdrawn;

(2) Such claims initiated in good faith may be perfected under the appropriate public land laws and, upon satisfactory proof of full compliance with these laws, the claimant shall be entitled to patent to the lands entered by him, which patent shall contain a reservation to the United States of all the coal, oil, or gas in the land patented, together with the right to prospect for, mine, and remove the same; and

(3) Should it be discovered at any time prior to the issuance of a final certificate on any claim initiated for

unreserved lands in Alaska that the lands are coal, oil, or gas in character, the patent issued on such entry shall contain the reservation referred to in paragraph (a)(2) of this section.

(b) The act of May 17, 1906 (34 Stat. 197), as amended August 2, 1956 (70 Stat. 954; 48 U.S.C. 357), permits, subject to the provisions of the act of 1922, homestead allotments to Indians, Leuts, and Eskimos of vacant, unappropriated, and unreserved lands in Alaska that may be valuable for coal, oil, or gas deposits and the act of August 17, 1961 (75 Stat. 384), permits the Secretary of the Interior to sell under the provisions of section 2455 of the Revised Statutes (43 U.S.C. 1171), as amended, lands in Alaska known to contain workable coal, oil, or gas deposits, or that may be valuable for the coal, oil, or gas contained therein, and which are otherwise subject to sale under said section 2455, as amended, upon the condition that the patent issued to the purchaser thereof shall contain the reservation required by section 2 of the act of 1922. (See Part 2710.)

(c) Section 2 of the act of 1922 provides:

(1) The coal, oil, and gas deposits reserved under the act shall be subject to disposal by the United States in accordance with the provisions of the laws applicable to coal, oil, or gas deposits, or coal, oil, or gas lands in Alaska, in force at the time of such disposal;

(2) Any person qualified to acquire coal, oil, or gas deposits, or the right to mine and remove the coal, or to drill for and remove the oil or gas under the laws of the United States shall have the right at all times (after the issuance of, and pursuant to, a lease or permit therefor) to enter upon the lands as provided by the act for the purpose of prospecting for coal, oil, or gas upon the approval, by the Secretary of the Interior, of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting;

(3) Any person who has acquired from the United States the coal, oil or gas deposits in any such land or the right to mine, drill for, or remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removal of the coal, oil, or gas therefrom, and mine and remove the coal or drill for and remove the oil or gas upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking, in an action instituted in any competent court to ascertain and fix the said damages.

(d) The act of 1922 extends to Alaska the principles of the acts of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81), June 22, 1910 (36 Stat. 583; 30 U.S.C. 83-85), and July 17, 1914 (38 Stat. 509; 30 U.S.C. 121-123), which, among other things, govern agricultural entries on coal, oil, or gas lands in States other than Alaska. The general instructions under these acts relating to the reservation of coal, oil, or gas to the United States as set forth in this subpart will, therefore, be followed in matters of practice and procedure.

§ 2093.4-2 Rights of prior mineral permittees or lessees.

If prior to the date of the initiation of a claim that is subject to the provisions of the act of 1922, the land was embraced in an oil and gas lease, or a coal permit or lease, or an application for or offer of such a lease or permit, the land will be subject to the right of such prior mineral permittee or lessee, or of such prior applicant for or offeror of a mineral permit or lease, to occupy and use so much of the surface of the lands as may be reasonably required for mineral leasing operations, without liability to the entryman, allottee, or patentee for crop and improvement damages resulting from such mineral activity.

§ 2093.4-3 Obligations of subsequent mineral permittees or lessees.

(a) Any coal permit applicant or noncompetitive oil and gas lease offeror whose application or offer was filed subsequent to the date of the initiation of a claim that is subject to the provisions of the act of 1922 must file with the authorized officer of the proper office a waiver from, or a consent of, the claimant or a bond or undertaking on forms approved by the Director, for coal applicants and for oil and gas offerors for the payment of all damages to the crops and improvements on the lands caused by the prospecting.

§ 2093.5 Disposition of minerals reserved to the U.S. Government.

§ 2093.5-1 Act of December 29, 1916.

(a) *Reservation of rights.* (1) Section 9 of the Act of December 29, 1916 (39 Stat. 864; 43 U.S.C. 299), provides that all entries made and patents issued under its provisions shall contain a reservation to the United States of all coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same; also that the coal and other mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal.

(2) There will be incorporated in patents issued on homestead entries under this act the following:

> Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove all the coal and other minerals from the same upon compliance with the conditions, and subject to the provisions and limitations, of the act of December 29, 1916 (39 Stat. 862).

Subpart 2094—Special Resource Values—Shore Space

AUTHORITY: R.S. 2478, secs. 4, 5, 69 Stat. 444; 43 U.S.C. 1201, 48 U.S.C. 462 note.

SOURCE: 35 FR 9540, June 13, 1970, unless otherwise noted.

§ 2094.0-3 Authority.

Section 1 of the act of May 14, 1898 (30 Stat. 409) as amended by the acts of March 3, 1903 (32 Stat. 1028) and August 3, 1955 (69 Stat. 444; 48 U.S.C. 371) provides that no entry shall be allowed extending more than 160 rods along the shore of any navigable water. Section 10 of the act of May 14, 1898, as amended by the acts of March 3, 1927 (44 Stat. 1364), May 26, 1934 (48 Stat. 809), and August 3, 1955 (69 Stat. 444), provides that trade and manufacturing sites, rights-of-way for terminals and junction points, and homesites and headquarters sites may not extend more than 80 rods along the shores of any navigable water.

§ 2094.0-5 Definitions.

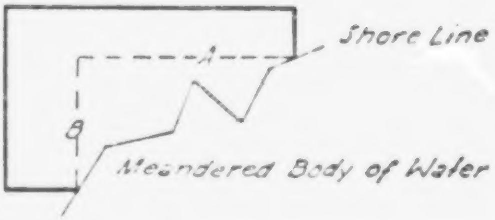
The term "navigable waters" is defined in section 2 of the act of May 14, 1898 (30 Stat. 409; 48 U.S.C. 411), "to include all tidal waters up to the line of ordinary high tide and all nontidal waters navigable in fact up to the line of ordinary highwater mark".

§ 2094.1 Methods of measuring; restrictions.

(a) In the consideration of applications to enter lands shown upon plats of public surveys in Alaska, as abutting upon navigable waters, the restriction as to length of claims shall be determined as follows: The length of the water front of a subdivision will be considered as represented by the longest straight-line distance between the shore corners of the tract, measured along lines parallel to the boundaries of the subdivision; and the sum of the distances of each subdivision of the application abutting on the water, so determined, shall be considered as the total shore length of the application. Where, so measured, the excess of shore length is greater than the deficiency would be if an end tract or tracts were eliminated, such tract or tracts shall be excluded, otherwise the application may be allowed if in other respects proper.

(b) The same method of measuring shore space will be used in the case of special surveys, where legal subdivisions of the public lands are not involved.

(c) The following sketch shows the method of measuring the length of shore space, the length of line "A" or line "B", whichever is the longer, representing the length of shore space which is chargeable to the tract:



§ 2094.2 Waiver of 160-rod limitation.

(a) The act of June 5, 1920 (41 Stat. 1059; 48 U.S.C. 372) provides that the Secretary of the Interior in his discretion, may upon application to enter or otherwise, waive the restriction that no entry shall be allowed extending more than 160 rods along the shore of any navigable waters as to such lands as he shall determine are not necessary for harborage, landing, and wharf purposes. The act does not authorize the waiver of the 80-rod restriction, mentioned in § 2094.0-3.

(b) Except as to trade and manufacturing sites, and home and headquarters sites, any applications to enter and notices of settlement which cover lands extending more than 160 rods along the shore of any navigable water will be considered as a petition for waiver of the 160-rod limitation mentioned in paragraph (a) of this section, provided that it is accompanied by a showing that the lands are not necessary for harborage, landing and wharf purposes and that the public interests will not be injured by waiver of the limitation.

Subpart 2096—Veterans

Authority: Sec. 6, 45 Stat. 1061, as amended, sec. 5, 58 Stat. 748, as amended; 43 U.S.C. 617e, 283, unless otherwise noted.

Source: 35 FR 9541, June 13, 1970, unless otherwise noted.

§ 2096.0-3 Authority.

(a) *Act of September 27, 1944.* The act of September 27, 1944 (58 Stat. 747; 43 U.S.C. 279-284), as amended, referred to in this part as the "1944 Act", grants to veterans of World War II and of the Korean Conflict certain benefits in connection with the public lands. These rights are in addition to the benefits conferred on persons in the military service by the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1178; 50 U.S.C., App. 560-572), as amended, and the regulations thereunder in this part, relating to rights initiated or acquired under the public land laws prior to the entrance of the claimant into the military or naval service.

(b) [Reserved]

(c) *Boulder Canyon Project Act.* Under the terms of section 9 of the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1063), as amended by the act of March 6, 1946 (60 Stat. 36, 43 U.S.C. 617h), all persons who served in the Army, Navy, Marine Corps, or Coast Guard during World War II, World War I, the war with Spain, or in the suppression of the insurrection in the Philippines, and who have been honorably separated or discharged therefrom or placed in the regular Army or Naval Reserve, will have a preference right for a period of three months to enter lands reclaimed by irrigation and reclamation under that act, subject to such qualifications as to industry, experience, character, and capital, as are deemed necessary to give reasonable assurance of success by the prospective settler. Such exclusive preference right is also given by the act cited to veteran settlers on lands watered from the Gila Canal in Arizona and on lands watered from the All-American Canal in California.

(d) *Act of October 17, 1940.* (1) The act of October 17, 1940 (54 Stat. 1178), known as the "Soldiers' and Sailors' Civil Relief Act of 1940," extends relief and benefits to persons in the military service.

(2) By section 14 of the act of June 24, 1948 (62 Stat. 623), as amended (50 U.S.C. App. Sup. 464) all of the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 were continued in effect until "repealed or otherwise terminated by subsequent act of the Congress."

(3) Citizens of the United States who serve with the forces of any nation with which the United States may be allied in the prosecution of any war in which it engages while the Soldiers' and Sailors' Civil Relief Act of 1940 is in force, will be entitled to the relief

and benefits afforded thereby if such service is similar to military service as defined in such act and in § 2096.0-5 and if they are honorably discharged and resume United States citizenship, or die in the service of the allied forces, or as a result of such service (Sec. 512, 54 Stat. 1190).

[35 FR 9541, June 13, 1970, as amended at 41 FR 1598, Jan. 9, 1976]

§ 2096.0-5 Definitions.

The following definitions, contained in section 101 of the Soldiers' and Sailors' Civil Relief Act of 1940, are adopted as definitions for the purpose of § 2096.2.

(a) The term "persons in the military service" includes the following persons and no others: All members of the Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy.

(b) The term "period of military service" and equivalent terms, includes the time between the following dates: For persons in the active service on October 17, 1940, it shall begin with that date; for persons entering the active service after the date mentioned, it shall begin with the date of entering the active service. It shall terminate with the date of discharge from active service or death while in the service, but in no case later than the date when the Soldiers' and Sailors' Civil Relief Act of 1940 ceases to be in force.

§ 2096.1 Act of September 27, 1944; benefits to veterans.

§ 2096.1-1 Persons entitled to veterans' benefits.

(a) A veteran is entitled to benefits under the 1944 act if he has served in the military or naval forces of the United States including the Coast Guard, on or after September 16, 1940, and prior to the termination of the Korean Conflict, referred to in this part as the "statutory period" of the 1944 act, and has been honorably discharged from such forces. The veteran is considered to have been honorably discharged for the purposes of the 1944 act if separated from the service by means of an honorable discharge, by the acceptance of resignation, or by a discharge under honorable conditions. A release from active duty is acceptable instead of a discharge if the release from active duty to an inactive status was under honorable conditions, whether or not in a reserve component or retirement, and whether or not the veteran thereafter resumes active military duty. In addition, the veteran must have:

(1) Served at least 90 days during the statutory period, or

(2) Been discharged on account of wounds received or disability incurred during the statutory period in line of duty, or

(3) After regular discharge, been furnished hospitalization or awarded compensation by the Government on account of wounds received or disability incurred during the statutory period.

A veteran, under 21 years of age, who is otherwise entitled to benefits under the 1944 act, may not be disqualified from making homestead entry or from any other benefits of the 1944 act merely because of age.

(b) [Reserved]

(c) The following persons may exercise the rights of a veteran under the regulations of this part, subject to compliance with other applicable regulations:

(1) The wife or husband of a veteran entitled to benefits under the 1944 act, if the veteran gives written consent, such benefits being in addition to any to which the spouse may individually be entitled under the 1944 act as a qualified veteran.

(2) The surviving wife or husband, or the surviving minor children if the spouse dies or remarries, of a veteran entitled to benefits under the 1944 act or of a person who died as the result of wounds received or disability incurred in line of duty while serving with the military or naval forces during the statutory period of the 1944 act.

(3) The heirs or devisees of a veteran entitled to the benefits of the 1944 act with respect to a homestead settlement or entry made by the veteran

who died before perfecting title to the claim, without leaving a surviving spouse or minor children.

[35 FR 9541, June 13, 1970, as amended at 41 FR 1598, Jan. 9, 1976]

§ 2096.1-2 Credit for and evidence of service.

(a) Any person, entitled to benefits under the regulations of this part, may obtain credit only for actual service, with the organizations and for the "statutory periods" specified in the regulations of this part, subject to minimum requirements specified in the regulation in this part except as follows:

(1) Credit is granted for the equivalent of two years service, regardless of the actual length of service by a veteran entitled to the benefits of the 1944 act, if the veteran was discharged because of wounds received or disability incurred in line of duty during the "statutory period" of the 1944 act; or after regular discharge, was furnished hospitalization or awarded compensation by the Government on account of such wounds or disability; or died as the result of wounds received or disability incurred in line of duty during such period.

(b) For the purpose of the regulations of this part, credit for service in the military or naval forces of the United States begins upon induction into such service whether by enlistment, draft, appointment, or call into active service from a reserve status. Credit for service by a veteran entitled to the benefits of the 1944 act terminates upon his honorable discharge or release from active duty under honorable conditions to an inactive status, whether or not in a reserve component, or retirement, and whether or not he has thereafter resumed active duty. He is considered to have been honorably discharged for the purposes of the 1944 act if he has been separated from the service by means of an honorable discharge, or by the acceptance of resignation or a discharge under honorable conditions.

(c) No credit for military service can be allowed where commutation proof is submitted.

(d) A veteran claiming benefits under this part must submit evidence clearly showing:

(1) A discharge from the armed forces or other unit on the basis of service with which he claims benefits under the regulations in this part;

(2) The period of his service; and

(3) Other facts upon which his claim is based.

Preferred evidence for paragraphs (d)(1) and (2) of this section is a photostatic copy of both sides of the veteran's certificate of discharge although other duly corroborated evidence will be accepted.

(e) Any other person claiming benefits under this section must submit all the evidence required of a veteran; and in addition, must include information as to whether the veteran is deceased, the date of his or her death, and whether the spouse has remarried, and facts as to homestead entry made by the veteran. A guardian, duly appointed and accredited to the Department must represent any surviving minor children. He must submit a like statement, and in addition give the name, address, and age of each surviving minor child.

[35 FR 9541, June 13, 1970, as amended at 41 FR 1598, Jan. 9, 1976]

§ 2096.1-3 Residence requirements under the homestead and Alaska homesite laws.

(a) Persons claiming benefits under the regulations in this part must comply with the homestead or Alaska homesite laws, as the case may be, for a period of at least one year and for such additional period as, added to the term of qualifying service, equals three years. Except as elsewhere indicated in this section, the following tables list the amount of residence required of such persons, according to the service credit to which they are entitled.

(1) Residence requirements under the homestead laws (43 U.S.C., sec. 161, et seq.):

(i) In the computation of the required periods of homestead residence, there has been excluded the five months' of absence each year which may be taken by giving notice as required in Subpart 2511.

Number of months of service credit	Number of months of residence required during the first 3 years after entry		
	1 year	A second year	A third year
19 or more	7		
18	7	1	
17	7	2	
16	7	3	
15	7	4	
14	7	5	
13	7	6	
7 to 12	7	7	
6	7	7	1
5	7	7	2
4	7	7	3
3	7	7	4
2[1]	7	7	5
1[1]	7	7	6

[1] Applicable only as to service in any Indian war, campaign, or in a zone of active Indian hostilities since veterans need a minimum of only 30 days service to obtain statutory benefits for such service.

(2) Residence requirements under the Alaska Homesite Act (48 U.S.C., sec. 461):

(i) These reduced residence requirements are applicable only to persons entitled to the benefits of the 1944 act.

Number of months of service credit	Number of months of residence required after entry		
	1 year of the entry	A second year of the entry	A third year of the entry
17 or more	5		
16	5	1	
15	5	2	
14	5	3	
13	5	4	
5 to 12	5	5	
4	5	5	1
3	5	5	2

(b) The following persons are excused from residence requirements:

(1) The surviving spouse, surviving minor orphan children, or other heirs or devisees, of a homestead entryman, who have succeeded to the homestead entry are excused from further residence on the land after the death of the entryman.

(2) Surviving minor orphan children of a veteran entitled to the benefits of the 1944 act who made an Alaska homesite entry are excused from further residence on the land after death of the entryman.

§ 2096.1-4 Cultivation and other requirements under the homestead and the Alaska homesite laws.

(a) An entryman entitled to benefits under the regulations in this part must comply with the requirements of these regulations and any others relating to his entry under the homestead or Alaska homesite law. If the entryman succeeds to the rights of a deceased entryman, the successor must show that the deceased entryman had complied with the applicable laws and regulations up to the time of his death.

(b) A homestead entryman obtaining benefits under the regulations in this part, may comply with the cultivation and other requirements and become entitled to a patent for his homestead prior to the termination of the three-year period otherwise required of homestead entrymen for such compliance, if he promptly files his final homestead proof. He must in any case cultivate at least one-eighth of the area entered. The following tables indicate the area of cultivation required under the homestead law of such persons, according to the service credit to which they are entitled.

(1) Cultivation requirements under the homestead laws for persons entitled to the benefits of the 1944 act:

Year after date of entry during which proof is filed[1]	Portion of entry required to be cultivated				
	First year	Second year	Third year	Fourth year	Fifth year
First[2]	1/8				
Second[3]		1/8			
Third		1/16	1/8		
Fourth		1/16	1/8	1/8	
Fifth		1/16	1/8	1/8	1/8

[1] This table assumes that final homestead proof is filed promptly after completion of the cultivation requirements listed in the above table. The homestead law requires cultivation until final proof. If the homesteader delays submission of final homestead proof beyond the period of residence required, therefore, he must perform the necessary cultivation during each annual cultivable season elapsing or reached before the submission of proof, except for those years to which his service credit is applied.

[2] Applicable only to persons entitled to credit for 19 months or more of service.

[3] Applicable only to persons entitled to credit for 7 months or more of service.

(2) Cultivation requirements under the homestead laws for persons entitled to the benefits of "veterans of other wars":

Year after date of entry during which proof is filed[1]	Portion of entry required to be cultivated				
	First year	Second year	Third year	Fourth year	Fifth year
First[2]					
Second[3]		1/16			
Third		1/16	1/8		
Fourth		1/16	1/8	1/8	
Fifth		1/16	1/8	1/8	1/8

[1] See footnote 1 in table in paragraph (b)(1) of this section.

[2] See footnote 2 in table in paragraph (b)(1) of this section.

[3] See footnote 3 in table in paragraph (b)(1) of this section.

(c) The following persons are excused from any further compliance with the requirements of laws and regulations relating to the entries to which they have succeeded, nor do they have to show that the entryman had complied with applicable laws and regulations prior to his death:

(1) The surviving minor orphan children of a person entitled to the benefits of the 1944 act.

(2) The surviving minor orphan children of anyone else who made homestead entry but who died prior to perfection of title, leaving only a minor child or minor children.

(d) A person entitled to benefits under the regulations of this part may receive a reduction in the area to be cultivated under the homestead regulations Subpart 2510 in the same manner and under the same conditions required of other applicants.

§ 2096.2 Act of October 17, 1940; benefits to persons in military service.

§ 2096.2-1 Claims protected from forfeiture.

No right to any public land owned or controlled by the United States, initiated or acquired under any laws of the United States, including the general mining and mineral leasing laws, by any person prior to entering the military service will during the period of such service be forfeited or prejudiced by reason of his absence from the land or his failure to perform any work or make any improvements thereon, or for failure to do any other act required by or under such laws.

(Sec. 507, 54 Stat. 1188; 50 U.S.C. App. 567)

§ 2096.2-2 Rights protected.

No public land claimant in the military service will be denied the right to take any action during his period of service which may be authorized by law or the regulations of the Department of the Interior for the perfection, defense, or further assertion of rights initiated or acquired prior to the date of entering the military service.

(Sec. 507, 54 Stat. 1188; 50 U.S.C. App. 567)

§ 2096.2-3 Rights of minors.

Any person under 21 years of age who serves in the military service while the Soldiers' and Sailors' Civil Relief Act of 1940 remains in force, will be entitled to the same rights under the laws relating to lands owned or controlled by the United States, including the mining and mineral leasing laws, as those over 21 possess under such laws. Any requirement as to the establishment of residence within a limited time will be suspended as to entry by such person until 6 months after his discharge from the military service. An application for entry by such person need not be under oath but must be signed by him.

(Sec. 507, 54 Stat. 1188; 50 U.S.C. App. 567)

§ 2096.2-4 Notice, proof, required.

(a) *Notice.* (1) Where notice of entrance into military service and of a desire to hold claims or obtain benefits is required by the act of October 17, 1940 (54 Stat. 1187, 50 U.S.C. App. sections 561-572) (except notice of a mining location), it shall be given on a form approved by the Director to the proper office, as provided in § 1821.2-1(b)(1) of this chapter, within 6 months after entrance into service.

(2) A claimant of a mining location shall, in accordance with § 2096.2-7, give notice of his military service before the close of the assessment year.

(3) Notice shall be by registered mail unless it is filed personally in the proper office by the claimant or by his agent.

(b) *Execution of affidavits.* A person in the military service may execute any affidavit or submit any proof required by law or the regulations of the Bureau of Land Management, in connection with the entry, perfection, defense, or further assertion of any rights initiated or acquired prior to entering such service, before the officer in immediate command and holding a commission in the branch of the service in which he is engaged. Such affidavit will be as binding in law, and with like penalties, as if taken before an authorized officer of the proper office.

(Sec. 507, 54 Stat. 1188; 50 U.S.C. App. 567)

§ 2096.2-5 Homesteads.

Homestead claimants are entitled to the following relief and benefits, in addition to the protection of their claims from forfeiture, as provided in § 2096.2-1:

(a) *Credit for military service.* Any person having a valid homestead settlement claim, or any person who has made homestead application for public lands which is allowed after the date of the filing thereof, or any homestead entryman whose application has been allowed, who after such settlement, application or entry enters the military service, is entitled, in the administration of the homestead laws, to have his military service construed to be equivalent to residence and cultivation upon the tract settled upon or entered, for the period of such service. Moreover, if he is discharged on account of wounds received or disability incurred in the line of duty, the term of his enlistment and any period of hospitalization due to such wounds or disability will be deducted from the required length of residence, without reference to the time of actual service. No patent will issue, however, until he has resided upon, improved and cultivated his homestead for a period of at least 1 year. He will be entitled during each year's required residence to a 5 months' leave of absence, in like manner as any other homesteader.

(b) *Credit for physical disabilities due to military service.* Any person entitied to credit for military service who is honorably discharged and because of physical incapacity due to such service is unable to return to the land, may make proof, regardless of whether or not 1 year's residence, improvements, and cultivation have been had, without further residence, improvements, or cultivation, at such time and place as the authorized officer of the proper office may authorize, and receive a patent to the land entered.

(c) *Widow, heirs, and minor children of homesteader.* If any person having a valid settlement claim or a pending or allowed homestead application dies while in the military service or as a result of such service his widow, if unmarried, or in the case of her marriage or death, his minor children or his or their legal representatives, may submit final proof without showing further residence, cultivation or improvements. If the deceased claimant had a valid homestead settlement claim for which application had not been filed, a homestead application based thereon must be presented. If the claim is on unsurveyed land, a homestead application cannot be presented until the land has been surveyed. In such case, request for survey should be made as promptly as possible, accompanied by a duly corroborated statement showing when the settlement claim was made, the periods during which deceased claimant resided upon and cultivated the land, and the facts as to his military service. The death of the claimant while in the military service or as a result of such service will be construed to be equivalent to a performance of all requirements as to residence and cultivation upon the homestead claim. Upon the submission of satisfactory proof, patent will be issued to the person or persons entitled thereto.

(d) *Contest of homestead.* (1) As long as the Soldiers' and Sailors' Civil Relief Act of 1940 remains in force, no application to contest a homestead entry made or applied for prior to the entrance of the entryman into the military service, will be allowed, or adverse proceedings against such entry ordered, on the ground of abandonment, unless there is an allegation therein that the entryman's alleged absence from the land was not due to his military service. No allegation of abandonment will be sustained against a homestead settler or entryman in connection with such contest, unless it is proved at the hearing, if one be had, that the claimant's alleged absence from the land was not due to such military service.

(2) The authorizing officer will reject an application to contest a homestead entry on the charge of abandonment, if he finds that it was filed during the period of the entryman's military service, or during any period of hospitalization of the claimant because of wounds received or disability incurred in the line of duty. If any charge other than or in addition to abandonment is made, or if the claimant enters the military service or is hospitalized after the contest application is filed, the proceedings will be suspended for the period of such service or hospitalization.

(Sec. 507, 54 Stat. 1188; 50 U.S.C. App. 567)

§ 2096.2-6 Desert-land entries.

Desert-land claimants are entitled to the following relief and benefits, in addition to the protection of their claims from forfeiture as provided in § 2096.2-1:

(a) *Credit for military service.* No desert-land entry made or held under the desert-land laws prior to the entrance of the entryman or his successor in interest into the military service, will be subject to contest or cancellation for failure to make or expand the sum of $1 per acre per year in improvements on the land or to effect the reclamation of the claim during the period the entryman or his successor in interest is engaged in the military service or during a period of 6 months thereafter or during any period of hospitalization because of wounds or disability incurred in the line of duty. The time within which such entryman or claimant is required to make such expenditures and effect reclamation of the land will be exclusive of his period of service and the 6-months' period and any such period of hospitalization. In order to obtain the benefits mentioned, notice of military service must be given in accordance with § 2096.2-4(a).

(b) *Credit for physical incapacities due to military service.* Any person who is entitled to credit for military service who is honorably discharged and because of physical incapacities due to his military service and who is unable to accomplish reclamation of and payment for the land, may make proof without further reclamation or payment and receive patent for the land entered or claimed.

(c) *Contest of desert-land entry.* (1) As long as the Soldiers' and Sailors' Civil Relief Act of 1940 remains in force, no application to contest a desert-land entry made or applied for prior to the entrance of the claimant into the military service will be allowed, or adverse proceedings against such entry ordered, for failure of the claimant to make or expend the sum of $1 per acre per year in improvements upon the claim, or to effect the reclamation of the claim during the period the entryman or his successor in interest is engaged in the military service, or during a period of 6 months thereafter, or during any period of hospitalization because of wounds or disability incurred in the line of duty, unless there is an allegation therein that the alleged default did not occur during such military service or hospitalization. No allegation of such default will be sustained against a desert-land claimant in connection with such contest unless it is proved at the hearing, if one be had, that the alleged default did not occur during such military service or hospitalization, as indicated.

(2) Any contest proceedings involving a desert-land entry, brought either before or after the claimant enters the military service, will be suspended for the period of such service and for 6 months thereafter, and during any period of hospitalization of the claimant because of wounds or disability incurred in the line of duty.

(Sec. 507, 54 Stat. 1188; 50 U.S.C. App. 567)

§ 2096.2-7 Mining claims.

The relief and benefits extended because of military service and the requirement as to notice of such service, made by section 505 of the Soldiers' and Sailors' Civil Relief Act of 1940, in connection with mining claims, are as follows:

(a) *Claims protected from forfeiture.* The provisions of section 2324 of the Revised Statutes, which require that on each mining claim located after May 10, 1872, and until patent has been issued therefor, not less than $100 worth of labor shall be performed or improvements made during each year, will not apply during the period of the claimant's military service, or until 6 months after the termination of such service, or during any period of hospitalization because of wounds or disability incurred in the line of duty, to claims or interests in claims which are owned by such person and which have been regularly located and recorded. No mining claim nor any interest in a claim which is owned by such a person and which has been regularly located and recorded will be subject to forfeiture for nonperformance of the annual assessment labor during the period of such military service, or until 6 months after the termination of such service, or of such hospitalization.

(b) *Notice of military service.* (1) The holder of a mining location who desires to obtain the relief and protection mentioned in paragraph (a) of this section, must, before the expiration of the assessment year during which he enters the military service, file or cause to be filed in the county recording office in which the location notice or certificate is recorded a notice that he has entered such service and that he desires to hold the mining claim under section 505 of the Soldiers' and Sailors' Civil Relief Act of 1940. The notice may be given on a form approved by the Director.

(2) If application for patent to the mining claim has been made, notice to the Bureau of Land Management of the applicant's entrance into military service is desirable, but not mandatory.

§ 2096.2-8 Leases, permits, licenses, and claims.

(a) No mineral or grazing lease, or any mineral, timber, or other permit or license, or any application for such lease, permit or license, or any right or claim which has been applied for or acquired under the public land laws by any person prior to entering the military service, will, during the period of such service, be forfeited or prejudiced by reason of his absence from the land or his failure to perform any work or to make any improvements thereon, or his failure to do any other act required by or under such laws.

(b) Where during the period of the military service, the claimant or his agent continues to operate or to make use of the land in accordance with the terms of the lease, permit, or other right, the rentals, royalties, and other obligations will become due and payable as provided by such instrument. If in a particular case the ability of the claimant to make such payment has been affected materially by reason of his military service, a showing of the facts may be made and such relief as may be deemed appropriate will be granted.

(c) The regulations in this section for the suspension of leases, permits, licenses, etc. are based on the general protection accorded all claims contained in section 501 of the Soldiers' and Sailors' Civil Relief Act of 1940, the specific authority for the suspension of leases and permits issued under the Federal mineral leasing laws, contained in section 506 of the act, and the general authority conferred on the Secretary of the Interior, to issue rules and regulations, contained in section 507 of the act.

(d) Any person having a mineral lease or permit, a grazing lease, or any lease, permit, license or other right involving the public lands, under the administration of the Bureau of Land Management, including claims the suspension of which is not specifically authorized by any section of the act, who enters the military service may, at his election, suspend all operations under such instrument for a period of time equivalent to the period of his military service and 6 months thereafter. The term of the lease or permit will not run during the period of such suspension, no rentals or royalties for the period of the suspension will be charged, and no use of the land during such period by the claimant or his agent under such instrument may be made.

(e) In order to obtain the benefits of section 506 of the act, a permittee or lessee of public domain under the Federal mineral leasing laws shall file a notice of his entrance into military service and of his desire to avail himself of the benefits of that section, in accordance with § 2096.2-4(a).

(f) The suspension of a lease, permit, license, etc., will not be construed to supersede the terms of any contract for the operation thereof.

(Sec. 507, 54 Stat. 1188; 50 U.S.C. App. 567)

Group 2100—Acquisitions

PART 2110—GIFTS

Subpart 2110—Gifts; General

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2110.0-1 Purpose.
2110.0-3 Authority.

Subpart 2111—Procedures

2111.1 Offer to convey.
2111.1-1 Place of offering.
2111.1-2 Designation of authority and description of property.
2111.1-3 Statement of ownership encumbrances.
2111.2 Acceptance of offer.
2111.3 Deed of conveyance.
2111.4 Status of lands.

AUTHORITY: Sec. 2, 48 Stat. 1270, R.S. 2478, as amended, sec. 8, 48 Stat. 1272, as amended; 43 U.S.C. 315a, 1201, 315g.

Subpart 2110—Gifts; General

§ 2110.0-1 Purpose.

The Secretary of the Interior may accept as a gift, lands, with or without improvements thereon, with or without limitations or conditions as to the future use and disposition thereof, in fee simple or any interest less than fee, where possession of such land or interest will promote the purposes of a grazing district or facilitate the administration or contribute to the improvement, management, use or protection of public lands and their resources. The authority of the Secretary is discretionary and acceptance of offers rests, among other things, upon a determination that the public interest will be served thereby.

[35 FR 9545, June 13, 1970]

§ 2110.0-3 Authority.

(a) *Section 8(a) of the Taylor Grazing Act.* Section 8(a) of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272; 43 U.S.C. 315g), as amended, authorizes the Secretary of the Interior to accept on behalf of the United States, any lands within or without the exterior boundaries of a grazing district as a gift, where such action will promote the purposes of a district or facilitate the administration of the public lands.

(b) *Section 103(a) of the Public Land Administration Act.* Section 103(a) of the Public Land Administration Act of July 14, 1960 (74 Stat. 506; 43 U.S.C. 1364), authorizes the Secretary to accept contributions or donations of real or mixed property, including rights-of-way, for the improvement, management, use and protection of the public lands and their resources administered by the Bureau of Land Management.

(c) Section 5 of the King Range Conservation Area Act (16 U.S.C. 460y) authorizes the Secretary to accept land or interest in land within the area by donation.

(d) Section 6(f) of the Wild and Scenic Rivers Act (16 U.S.C. 1277(f)) authorizes the Secretary to accept donations of lands and interests in land, funds and other property for use in connection with his administration of the national wild and scenic rivers system.

[35 FR 9545, June 13, 1970, as amended at 41 FR 15851, Apr. 15, 1976; 41 FR 29122, July 15, 1976]

Subpart 2111—Procedures

SOURCE: 35 FR 9545, June 13, 1970, unless otherwise noted.

§ 2111.1 Offer to convey.

§ 2111.1-1 Place of offering.

Any person desiring to make a gift, contribution, or donation of land or interest in land to the United States should submit an offer to convey and transfer said property to the United States voluntarily. The offer should be transmitted to the proper land office in accordance with the provisions of § 1821.2 of this chapter.

§ 2111.1-2 Designation of authority and description of property.

The offer should designate the statute under which the gift is to be made and should describe the lands by legal subdivisions of the public land surveys, if possible, with a description of any permanent improvements fixed to the land. Any limitations on title should be fully detailed and any conditions as to future use and disposition of the land should be set forth.

§ 2111.1-3 Statement of ownership encumbrances.

The offer should be accompanied by a statement showing that the offeror is the record owner in fee of lands so offered, free and clear of all encumbrances; that there are no persons claiming the land adversely to the offeror; whether there are any unpaid taxes or assessments levied or assessed against the offered land or that could operate as a lien thereon; whether there is a tax or assessment due on such lands or that could operate as a lien thereon, but which tax or assessment is not yet payable; and that there are no unredeemed tax deeds outstanding against the lands.

§ 2111.2 Acceptance of offer.

Where the authorized officer finds that acceptance of the offered lands is in consonance with the program set forth in § 2110.0-1, he shall advise the offeror of the acceptance of the offer and request the offeror to submit a voluntary deed of conveyance to the United States of the land offered, together with an affidavit that the offeror has not conveyed or encumbered the land in any manner from the time of making the offer up to and including the date of recordation of the deed.

§ 2111.3 Deed of conveyance.

The deed of conveyance to the United States must be executed, acknowledged, and duly recorded in accordance with the laws of the State in which the lands are situated. The deed should recite that it is made "as a gift," as authorized by statute appropriately designated. Where such deed is made by an individual, it must show whether the person making the conveyance is married or single. If married, the spouse of the donor must join in the execution and acknowledgment of the deed in such manner as to bar effectually any right of courtesy or dower, or any claim whatsoever to land conveyed, or it must be fully and satisfactorily shown that under the laws of the State in which the land conveyed is situated, such spouse has no interest, present or prospective, which makes his or her joining in the deed of conveyance necessary. Where the deed of conveyance is by a corporation, the order or direction of the board of directors or other governing body should be recited in the deed, and a copy thereof must accompany the instrument of transfer. Both the deed and the instrument must bear the impression of the corporate seal.

§ 2111.4 Status of lands.

Upon acceptance of the deed of conveyance, the lands or interests so conveyed will become property of the United States but will not become subject to applicable land and mineral laws of this title unless and until an order to that effect is issued by the authorized officer.

PART 2120—LEASES

Subpart 2120—Leases; General

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2121.5 Improvements by the United States on leased lands.

AUTHORITY: 48 Stat. 1270; 43 U.S.C. 315a.

SOURCE: 35 FR 9546, June 13, 1970, unless otherwise noted.

Subpart 2120—Leases; General

§ 2120.0-2 Objectives.

When it is determined by the authorized officer that any State, county, or privately owned lands located within grazing districts are chiefly valuable for grazing, and are necessary to promote the orderly use, improvement, and development of grazing districts, steps should be taken to secure offers of leases of such lands from the owners thereof.

§ 2120.0-3 Authority.

(a) *The Act of June 23, 1938.* The act of June 23, 1938 (52 Stat. 1033; 43 U.S.C. 315m-1, 315m-4 inclusive), known as the Pierce Act, authorizes the Secretary of the Interior in his discretion to lease, at rates to be determined by him, any State, county, or privately owned lands chiefly valuable for grazing purposes and lying within the exterior boundaries of grazing districts created under the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269, as amended; 43 U.S.C. 315 et seq.) when in his judgment, the leasing of such lands will promote the orderly use of the district and aid in conserving the forage resources of the public lands therein, and the authorized officer of the Bureau of Land Management may approve leases under the Pierce Act on behalf of the United States in accordance with this part. Leases so approved need not be submitted for Secretarial approval.

Subpart 2121—Procedures

§ 2121.1 Evidence of ownership.

Parties offering to lease lands to the United States under the provisions of this Act will be required to furnish evidence of ownership as follows:

§ 2121.1-1 Certificate of ownership for State or county lands.

Where State and county lands are offered for lease, a certificate from the proper State or county official will be required showing that title to the lands is in the State or county and that the officer or agency of the State or county offering them for lease is empowered by the laws of such State to lease such lands.

§ 2121.1-2 Certificate of ownership for private lands.

Where privately owned lands are offered for lease, the party offering them will be required to file with the local office of the Bureau of Land Management certificates from either the proper county officials, a licensed abstracter, or an administrative officer of the Bureau of Land Management whichever is required by an authorized officer, certifying that the records of the county in which the lands are situated show that the party offering the lands for lease is the record owner thereof or in legal control of such lands under appropriate recorded lease permitting the subleasing of the property, and including an itemized statement showing the nature and extent of any liens, tax assessments, mortgages, or other encumbrances.

§ 2121.2 Leases.

§ 2121.2-1 Form of lease.

Leases under the Pierce Act should conform in general to a form approved by the Director. This form is believed adaptable for use in all of the States within which grazing districts have been established under the Taylor Grazing Act. Leases under the Pierce Act must be executed by the lessor in the manner prescribed by the laws of the State within which the lands leased are situated.

§ 2121.2-2 Period of lease.

Leases may be made for such periods as are deemed proper by an authorized officer in promoting a proper land-use program in connection with the public range, not to exceed, however, the 10-year period as limited by the Pierce

Act, beginning with the date of the approval of such lease.

§ 2121.2-3 **Approval of lease; renewal.**

Local negotiations for leasing of lands under this act will not be effective until the lease and any renewal thereof has been approved by an authorized officer of the Bureau of Land Management. Upon such approval the lease should be recorded in the land records of the county in which the land is situated.

§ 2121.3 **Payment of rental.**

The carrying capacity of the lands will be taken into consideration in negotiating the rental to be paid. Payment of rentals will be made annually by the United States at the end of the period for which licenses or permits to graze on the lands involved have been granted, or as soon thereafter as the moneys collected by the United States from its licensees or permittees for the use of such lands have been appropriated by the Congress in accordance with the provisions of the Pierce Act, and made available for such purpose, or moneys for the payment of such rentals have been made available through contributions under section 9 of the Taylor Grazing Act (48 Stat. 1273; 43 U.S.C. 315h).

§ 2121.4 **Fees.**

§ 2121.4-1 **Computation of fees.**

The aggregate of the grazing fees collected for the use of the lands leased under the provisions of the Pierce Act must be sufficient to insure a return to the United States of an amount equal to the aggregate of the rentals paid for such lands and the aggregate of the grazing fees collected for the use of all the lands leased in any one State must be at least equal to the aggregate of the rentals paid in that State.

§ 2121.4-2 **Disposition of receipts.**

All moneys received in the administration of lands leased under the Pierce Act will be deposited in the Treasury of the United States as provided in section 4 of that Act and will be available when appropriated by the Congress for the leasing of lands. Distribution of such receipts, therefore, will not be made as provided in sections 10 and 11 of the Taylor Grazing Act (48 Stat. 1273; 43 U.S.C. 315i, 315j).

§ 2121.4-3 **Allocation of funds appropriated.**

Moneys received in the administration of lands leased under the Pierce Act, when appropriated by the Congress, will be allocated to the budgets of the State Director for disbursement in accordance with that act and the regulations in this part. Records of disbursements thereof will be maintained under existing procedure.

§ 2121.5 **Improvements by the United States on leased lands.**

The procedure in placing improvements on any lands leased under the Pierce Act, will, so far as practicable, be the same as provided under Part 4110 of this chapter.

PART 2130—ACQUISITION OF LANDS OR INTERESTS IN LANDS BY PURCHASE OR CONDEMNATION

Subpart 2130—Acquisition of Lands or Interests in Lands by Purchase or Condemnation—General

Sec.
2130.0-3 Authority.
2130.1-2130.3 [Reserved]
2130.4 Acquisition of lands in King Range Conservation Area.
2130.4-1 Purchase.

Subpart 2137—Condemnation of Lands or Interests in Lands

2137.0-7 Appraisals.
2137.0-8 [Reserved]
2137.0-9 Reasons for condemnation.

SOURCE: 41 FR 15851, Apr. 15, 1976, unless otherwise noted.

Subpart 2130—Acquisition of Lands or Interests in Lands by Purchase or Condemnation—General

§ 2130.0-3 **Authority.**

The Act of October 21, 1970, (16 U.S.C. 460y) provides for the establishment of the King Range National Conservation Area and authorizes the

Secretary of the Interior to acquire by purchase any land or interest in land within the area pursuant to the Act.

§§ 2130.1-2130.3 [Reserved]

§ 2130.4 Acquisition of lands in King Range Conservation Area.

§ 2130.4-1 Purchase.

If the Secretary of the Interior determines that the acquisition of land or interest in land is desirable for consolidation of public lands within the Area he may acquire land or interest in land within the King Range National Conservation Area by purchase with donated funds appropriated specifically for that purpose.

Subpart 2137—Condemnation of Lands or Interests in Lands

§ 2137.0-7 Appraisals.

Prior to initiation of condemnation proceedings, the property will be appraised pursuant to approved Bureau procedures to determine its fair market value and an offer made to purchase it at that appraised price.

§ 2137.0-8 [Reserved]

§ 2137.0-9 Reasons for condemnation.

Incompatible use. The power of eminent domain will be exercised only if the Secretary finds that the use to which the land is being put is incompatible with the purposes of the King Range National Conservation Area Act or the management plan prepared in accordance with the Act, and if efforts to acquire the land by other means have failed.

PART 2200—EXCHANGES—GENERAL PROCEDURES

Subpart 2200—Exchanges—General

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Subpart 2201—Exchanges—Specific Requirements

2201.1 Notice of realty action.
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Subpart 2202—Exchanges—National Forest Exchange

2202.1 Applicable regulations.

AUTHORITY: Secs. 205, 206, 302 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715, 1716, 1732 and 1740).

SOURCE: 46 FR 1638, Jan. 6, 1981, unless otherwise noted.

Subpart 2200—Exchanges—General

§ 2200.0-1 Purpose.

This Part 2200 sets forth procedures for the exchange of public lands or interests therein for non-Federal lands and interests therein.

§ 2200.0-2 Objective.

The objective is the acquisition and disposal of lands and interests therein for the benefit of the public interest as provided in Part 1601 of this title, through use of the exchange authority granted by the Federal Land Policy and Management Act of 1976. When considering public interest, full consideration will be given to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals and fish and wildlife. There must also be a finding that the values and objectives which Federal lands and interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands and interests and the public objectives they could serve if acquired.

§ 2200.0-3 Authority.

These regulations are issued under the authority of sections 205, 206, 302(b) and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715, 1716, 1732 and 1740), and apply to any proposed exchange filed after October 21, 1976.

§ 2200.0-4 Responsibilities.

The Bureau of Land Management shall carry out the responsibilities of the Secretary of the Interior under these regulations.

§ 2200.0-5 Definitions.

As used in this part, the term:

(a) "Secretary" means Secretary of the Interior.

(b) "Person" means any person or entity legally capable of conveying and holding land and interests therein, under the laws of the State within which the land or interests therein are located. A person shall be a citizen of the United States, or in the case of a corporation, shall be subject to the laws of any State or of the United States.

(c) "Public lands" means any lands and interests in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except (1) lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(d) "Lands" means any land and interests therein.

(e) "Notice of realty action" means publication of a determination as set out in § 2201.1 of this title, that certain lands are suitable for disposal by exchange under specified laws.

(f) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(g) "Exchange" means a conveyance of lands and interests therein from the United States to a person at the same time there is a conveyance of lands and interests therein from the person to the United States.

(h) "Equal value exchange" means an exchange of lands, or interests therein, where fair market value appraisals show that the interests being exchanged are of equal value.

(i) "Money equalization" means balancing the differences in the fair market value of the properties by a money payment made by either party.

(j) "Segregation" means the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of the public land laws, including the mining laws, pursuant to the exercise by the Secretary of the Interior of regulatory authority as conferred by law to allow for the orderly administration of the public lands.

§ 2200.0-6 Policy.

(a) Exchange proposals shall meet policy objectives of the Federal Land Policy and Management Act and shall comply with all applicable Federal statutes, regulations and executive orders.

(b) Exchanges of interests in lands shall be considered on a case-by-case basis.

§ 2200.0-7 Scope.

(a) These regulations apply to all exchanges involving public lands and interests therein administered by the Secretary, through the Bureau of Land Management, except where an exchange is specifically authorized by Subparts 2212, Part 2240, Part 2250, and Subparts 2271, 2272, 2273 and 2274, noted in the regulations of Group 2200 of this title.

(b) Qualified requests for fee coal exchanges made under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)) and as provided in Subpart 3437 of this title shall be processed in accordance with this part, except as otherwise provided in Subpart 3437 of this title.

(c) These regulations apply to the exchange of interests, such as mineral estate interests, separate and apart from the surface estate in either Federal or non-Federal lands.

§ 2200.1 Lands subject to disposal by exchange.

(a) Public lands may be disposed of by exchange under this part only if their disposal is in conformance with the land use planning provisions contained in Subpart 1601 of this title.

(b) The public lands to be exchanged shall be located in the same State as the non-Federal lands or interests to be acquired.

(c) A determination that lands have been found suitable for disposal by exchange shall be evidenced by the issuance of a notice of realty action. The notice of realty action shall contain: (1) A description of both the Federal and non-Federal lands proposed to be exchanged; (2) the identity of the party(s) with whom the exchange will occur; (3) the terms and conditions of the exchange; (4) any reservations, terms, covenants and conditions necessary to insure proper land use and protection of the public interest; (5) the intended time of the exchange; and (6) an opportunity for public comment.

(d) As part of the consideration of whether public interest would be served by disposal of fee coal through exchange, the applicability of unsuitability qualifications of Subpart 3461 of this title to the Federal lands are relevant and will be applied.

§ 2200.2 Lands subject to acquisition by exchange.

(a) Non-Federal lands and interests therein may be acquired only when their acquisition is consistent with the mission of the Department of the Interior. Both the non-Federal and public lands and interests therein shall be located in the same State.

(b) Acquisition of lands by exchange under this part may be made only if their acquisition is in conformance with land use planning provisions under Subpart 1601 of this title.

(c) Unsurveyed school sections are considered as "non-Federal" lands and may be used by the State in an exchange. However, minerals shall not be reserved by the State when unsurveyed sections are used in an exchange. As a condition of the exchange, the State shall have waived all rights to unsurveyed sections used in the exchange.

§ 2200.3 Lands acquired by exchange.

(a) Lands and interests in lands acquired by exchange shall, upon acceptance of title by the authorized officer, become public lands. Such public lands are not available for location under the mining laws of application for sale, entry or mineral leasing. A notice of their availability shall be published in the FEDERAL REGISTER. The notice shall state the date and time of their availability and the forms of authorization. Such availability shall be noted on the public land records.

(b) Lands and interests in lands acquired by exchange within a grazing district established under section 1 of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315), shall become a part of that district.

(c) Lands and interests in lands acquired within the National Forest System may be transferred to the Secretary of Agriculture by the Secretary and thereby become National Forest System lands subject to all laws and regulations applicable to other National Forest System lands.

(d) Lands and interests in lands acquired under provisions of section 206 of the Federal Land Policy and Management Act and located within the National Park, Wildlife Refuge, Wild and Scenic Rivers, Trails or any other Federal land System established by an Act of Congress may be transferred by the Secretary to the appropriate agency for administration in accordance with the laws, rules and regulations applicable to that system.

(e) The acquisition procedures for non-Federal lands and interests therein to be acquired by exchange shall be in strict adherence with applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

Subpart 2201—Exchanges—Specific Requirements

§ 2201.1 Notice of realty action.

(a) A notice of realty action offering to exchange certain lands which have, through the public land use planning process of the Bureau of Land Management, been determined suitable for acquisition and disposal by exchange, shall be published in the FEDERAL REGISTER and shall be published once a week for 3 weeks thereafter in a newspaper of general circulation in the area of the lands to be acquired and the lands to be disposed of by a proposed exchange. The notice shall provide 45 days after the date of issuance for comments by the public and interested parties. Comments on the notice of realty action shall be sent to the office issuing the notice.

(b) The publication of the notice of realty action on an exchange proposal in the FEDERAL REGISTER may segregate the public lands covered by the notice of realty action to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. Any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant, if the notice segregates the lands from the use applied for in the application. The segregative effect of the notice of realty action on the public lands shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the FEDERAL REGISTER of a termination of the segregation or 2 years from the date of its publication, whichever occurs first. Any prior reserved Federal interests in the non-Federal lands may be segregated by the notice of realty action to the same extent the public lands are segregated.

(c) When the exchange of a tract of public lands requires the cancellation of a grazing permit or lease in its entirety notice shall be given the permittee or lessee 2 years prior to disposal except in cases of emergency. A permittee or lessee may unconditionally waive the 2-year notice (see 43 CFR 4110.4-2(b)). The publication of a notice of realty action shall constitute notice to the grazing permittee or lessee if notice has not been previously given. No public lands in a grazing lease or permit may be conveyed until the provisions of Part 4100 of this title concerning compensation for any authorized improvements have been met.

(d) The notice of realty action shall list all reservations to be included in the conveyance to and from the United States, including, where the Federal lands are encumbered by a mineral lease or permit, a reservation to the United States for the duration of the mineral lease or permit of the mineral or minerals covered by the lease or permit.

(e) The notice of realty action shall be sent to the Governor of the State within which the public lands are located, the head of the governing body of any political subdivision having zoning or other land use regulatory responsibilities in the geographic area within which the public lands are located and the head of any political subdivision having administrative or public services responsibility in the geographic area within which the public lands are located not less than 60 days prior to the exchange of titles. The notice shall be sent to other known interested parties of record including, but not limited to, adjoining landowners and current or past land users.

§ 2201.2 Proposals.

(a) Exchange proposals may be submitted by a person who owns lands or interests in lands, by non-Federal entities, by Federal departments or agencies or by the Bureau of Land Management. When an exchange proposal is made to the Bureau of Land Management, it shall be made in writing to the District Manager for the district in which the Federal lands are located. The authorized officer shall publish a notice of initiation or receipt of an exchange proposal within 10 days of initiation or receipt of such proposal.

(b) An exchange proposal may, if found by the authorized officer to be in accordance with Bureau of Land Management policies, programs and the regulations in this part, be the basis of publication of a notice of realty action as provided in § 2201.1 of this title.

(c) Where an exchange proposal is not accepted by the authorized officer and made the basis of a notice of realty action, the proponent shall be so advised in writing with a statement of the reason(s) for the non-acceptance and advised of the availability of a protest to the State Director.

(d) If requested in writing by the proponent within 30 days of the mailing of the notification of non-acceptance, the decision of non-acceptance of the authorized officer shall be reviewed by the State Director to determine if it is in accordance with the Bureau of Land Management policies, programs and the regulations in this part. Such review shall be completed by the State Director and the proponent notified in writing of the action taken within 60 days of receipt of the written request by the State Director.

§ 2201.3 Appraisals.

Appraisals to determine current fair market value of lands and interests in lands to be exchanged shall be in accordance with the principles in the Interagency Department of Justice publication entitled "Uniform Appraisal Standards for Federal Land Acquisition." Final determination of the value of lands and interests in lands proposed for exchange by either party rests with the Secretary.

§ 2201.4 Legal description of property.

The public lands and interests in public lands proposed for exchange shall be properly described and locatable under the survey laws and standards of the United States. The non-Federal lands may be described as part of a surveyed section or by a metes and bounds survey, tied to a township, range, meridian, and State, or may be described by the description contained in an approved protraction diagram of the Bureau of Land Management.

§ 2201.5 Final requirements.

At the end of the period provided in the notice of realty action and upon a determination by the authorized officer that a particular exchange is acceptable, the owner or holder of the non-Federal land and interest shall provide the following:

(a) *Evidence of title acceptable to the authorized officer.* (1) For private land owners, any one of the documents set forth in the "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" (Department of Justice, 1970 ed.) that is acceptable to the authorized officer.

(2) For States, if the property was ever held in private ownership, a certificate of title as prescribed in § 2201.5(a)(1). If lands and interests in lands have not been in private ownership, either of the following shall be acceptable evidence of title: (i) A certification by the appropriate State officer that the property has not been sold or otherwise encumbered and a certification under the official seal of the recorder of deeds or other appropriate State officer that no instrument has been recorded or filed that would encumber title to the property or (ii) a certification by an abstractor or abstract company that no instrument has been recorded or filed that conveyed or would encumber title to the property.

(b) *Conveyance Documents.* All deeds to the United States shall be prepared in accordance with "A Procedural Guide for the Acquisition of Real Property by Governmental Agencies" (Department of Justice, 1968 ed.). (1) Private property owners shall submit a warranty deed or other document of conveyance which meets Department of Justice title standards for property acquired by the United States conveying the privately-owned property to the United States, and stating that the deed is made "for and in consideration of the exchange of certain land and interests as authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is authorized in lieu of the Federal Land Policy and Management Act of 1976. Deeds shall be executed, acknowledged and recorded in accordance with the laws of the State in which the lands are located.

(i) Any revenue stamps required by State law shall be affixed to the deed and cancelled.

(ii) A deed executed by an individual grantor shall disclose the marital status of the grantor. A married grantor shall join with the spouse to execute a deed to bar any right of courtesy, dower, community interest or any other claim to the property conveyed unless written evidence is submitted that shows that under the laws of the State where the conveyed property is located the grantor's spouse has no present or prospective interest in the lands.

(iii) Any deed executed by a partnership, association or other entity other than a corporation shall corrborate that the deed is executed pursuant to the articles of association or partnership or other similar document creating the entity. If there are none or if signing authority is not provided for in the document, the deed shall be signed by each member of the entity and each signor shall furnish a statement that he/she is a member. The deed shall state that it is made "for and in consideration of the exchange of certain land and interests as authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is authorized in lieu of the Federal Land Policy and Management Act of 1976.

(iv) Any deed executed by a corporation shall corroborate that the deed is executed pursuant to its bylaws or a resolution or order by the corporation's board of directors or other governing body. A copy of the bylaws, resolution or order shall accompany the deed and shall, unless not required by State law, bear the corporate seal. Where State law does not require such seal evidence, a citation of applicable State law shall be provided. The deed shall state that it is made "for and in consideration of the exchange of certain land and interests as authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is authorized in lieu of the Federal Land Policy and Management Act of 1976.

(2) States shall submit a deed of conveyance that includes a statement that the deed is made "for and in consideration of the exchange of certain land and interests as authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)." If the exchange is being made pursuant to other authority, the deed to the United States shall state the authority under which the exchange is authorized in lieu of the Federal Land Policy and Management Act of 1976. The deed shall be executed, acknowledged and recorded in accordance with the laws of the State. A certification that the State officer executing the conveyance is authorized to do so under State law shall accompany the deed. When unsurveyed sections are used as exchange lands by a State, the exchange shall constitute a relinquishment of the State's right to the unsurveyed sections used in the exchange.

(c) *Taxes and equalizing money.* (1) Where taxes constitute a lien on the non-Federal property, the owner of the non-Federal land or interest shall furnish a bond with a qualified surety or other security acceptable to the authorized officer for an amount at least 20 percent in excess of taxes paid on the property for the previous year or assure payment of taxes by making a money deposit to the authorized officer in like amount. When evidence of payment of taxes acceptable to the authorized officer is furnished, the bond shall be released or the cash returned to the owner of the non-Federal lands and interests.

(2) A money payment for equalization of value shall not exceed 25 percent of the value of the public lands and interests being conveyed, but the amount of the money payment shall be reduced to as small an amount as possible.

§ 2201.6 Exchange agreement.

An exchange agreement may be entered into between the Bureau of Land Management, as represented by the authorized officer, and exchange party. The agreement shall identify the lands or the estate to be exchanged, all reservations and outstanding interests, any necessary cash equalization and all other terms, conditions, covenants and reservations.

§ 2201.7 Acceptance of conveyance and removal of improvements.

(a) *Acceptance of conveyance.* If the title and other evidence required of the owner of the non-Federal lands and interests in lands are in conformity with the law and regulations, the authorized officer may accept title to the non-Federal property conveyed to the United States. A patent or other document of conveyance for the property exchanged shall be issued and a notice of the issuance of said conveyance documents shall be published in the FEDERAL REGISTER. The Governor and the head of local governments shall be immediately notified of the issuance of conveyance documents for public lands located within their respective jurisdictions. A money payment, if required to equalize values, shall be made by the appropriate party prior to or at the date of conveyance.

(b) *Removal of improvements.* If any buildings, fencing or other movable improvements owned or erected by a party to an exchange on the non-Federal lands conveyed are not a part of the exchange proposal, the party may remove such improvements from the lands upon receipt of notice that the exchange has been approved: *Provided*, That such removal is accomplished with in the period specified in the notice or any reasonable extension that may be granted by the authorized officer.

(c) *Other improvements.* Where public lands to be conveyed under this part contain authorized improvements, other than those identified in § 2201.1(c) or those subject to patent reservation, the owner of such improvements shall be given an opportunity to remove them if such owner is not the exchange party, or the exchange party may compensate the owner of such authorized improvements and submit proof of compensation to the authorized officer.

§ 2201.8 Title evidence.

(a) If no exchange agreement is entered into, no action taken prior to issuance of patent or other document of conveyance shall establish any contractual or other rights against the United States, or create any contractual or other obligation of the United States.

(b) If a party to a prospective exchange has submitted title evidence in connection with an exchange and processing of the proposal is terminated and the exchange will not be proposed again in the near future, the title evidence shall be returned to the exchange party. Where the deed has been recorded, a quitclaim deed for the land conveyed to the United States shall be issued under section 6 of the Act of April 28, 1930 (43 U.S.C. 872).

Subpart 2202—Exchanges—National Forest Exchange

§ 2202.1 Applicable regulations.

(a) All proposals for exchange for the consolidation or extension of national forests, under the authority and provisions of the Act of March 20, 1922 (42 Stat. 465), as amended (16 U.S.C. 485) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) shall be filed with the appropriate officer of the Forest Service, U.S. Department of Agriculture, in compliance with the regulations in 36 CFR Part 254.

(b) The filing of a notice of an offer for forest exchange with the authorized officer and the notation of such proposed exchange on the public land records shall segregate the National Forest System lands included in the proposed exchange from appropriation, location or entry under the general mining laws but not from the applicability of those public land laws governing the use of the National Forest System under leases license or permit, or governing the disposal of mineral or vegetative resources, other than under the general mining laws. The segregative effect of the offer notation on the public land records shall terminate upon issuance of patent or other document of conveyance to such lands, upon rejection or denial of the exchange offer or 2 years from the date of the notation whichever occurs first.

PART 2210—STATE EXCHANGES

Subpart 2212—Miscellaneous State Exchanges

§ 2212.1 General.

Because of the infrequency of transactions involving State exchanges under the Acts of May 7, 1932 (47 Stat. 150), section 3 of the Act of June 14, 1934 (48 Stat. 962), and the Act of December 7, 1942 (56 Stat. 1042), regulations covering these transactions are not codified. Any such transaction will be handled in a manner consistent with the authorizing laws and with the regulations in Part 2200.

[35 FR 9549, June 13, 1970, as amended at 46 FR 1642, Jan. 6, 1981]

PART 2240—NATIONAL PARK SYSTEM EXCHANGES

Sec.
2240.0-3 Authority.
2240.1 General.

§ 2240.0-3 Authority.

(a) *Point Reyes National Seashore, Calif.* The Act of September 13, 1962 (76 Stat. 538; 16 U.S.C., secs. 459c-459c-7), providing for the establishment of the Point Reyes National Seashore in the State of California, authorizes the Secretary of the Interior, when the public interest will be benefited thereby, to acquire land, waters, and other property within the boundaries of the Point Reyes National Seashore by exchange. He may accept title to any non-Federal property located within such area and convey to the grantor of such property any federally owned property under the jurisdiction of the Secretary within Arizona, California, Nevada, and Oregon, notwithstanding any other provision of law. The properties so exchanged shall be approximately equal in fair market value, provided that when such values are not equal the Secretary may accept cash from or pay cash to the grantor in such an exchange in order to equalize the value of the properties exchanged.

(b) *Fire Island National Seashore.* The Act of September 11, 1964 (78 Stat. 928; 16 U.S.C., secs. 459e-459e-9), authorizes the Secretary of the Interior to establish an area to be known as the "Fire Island National Seashore" and to acquire by exchange lands within the boundaries of the seashore as specified in the act. When acquiring land by exchange the Secretary may accept title to any nonfederally owned land located within the boundaries of the national seashore and may convey to the grantor any federally owned land under his jurisdiction. The properties so exchanged shall be approximately equal in fair market value, but the Secretary may accept cash from or pay cash to a grantor in order to equalize the values of the lands exchanged.

(c) *Lake Mead National Recreational Area.* The Act of October 8, 1964 (78 Stat. 1039, 16 U.S.C., sections 460n-460n-9) authorizes the Secretary of the Interior to revise the boundaries of the Lake Mead National Recreation Area and to procure property within the exterior boundaries of such area in such manner as he shall consider to be in the public interest. In exercising his authority to acquire property by exchange, the Secretary may accept title to any non-Federal property located within the boundaries of the recreation area and convey to the grantor of such property any federally owned property under the jurisdiction of the Secretary. The properties so exchanged shall be approximately equal in fair market value, provided that the Secretary may accept cash from or pay cash to the grantor in an exchange in order to equalize the values of the properties exchanged.

(d) *Whiskeytown-Shasta-Trinity National Recreation Area, Calif.* The Act of November 8, 1965 (79 Stat. 1295) authorizes the Secretary of the Interior to administer the Whiskeytown unit of the Whiskeytown-Shasta-Trinity National Recreation Area. The Secretary is authorized to accept title to any non-Federal property within any part of the recreation area and in exchange therefor to convey to the grantor any federally owned property under his jurisdiction within the State of California which he classifies as suitable for exchange or disposal. The properties so exchanged shall be approximately equal in fair market value, provided that the Secretary may accept cash from or pay cash to the grantor in an exchange in order to equalize the value of the properties exchanged.

(e) *Bighorn Canyon Recreation Area.* The Act of October 15, 1966 (16 U.S.C. 460t (Supplement III, 1965-67)) establishes the Bighorn Canyon National Recreation Area. It authorizes the Secretary of the Interior to accept title to any non-Federal property within the area and convey in exchange therefor any federally owned property under his jurisdiction in the States of Montana and Wyoming which he classifies as suitable for exchange or other disposal, notwithstanding any other provision of law. Property so exchanged shall be approximately equal in fair market value, provided that the Secretary may accept cash from, or pay cash to, the grantor in an exchange in order to equalize the values of the properties exchanged.

(f) *Act of July 15, 1968.* (1) The Act of July 15, 1968 (16 U.S.C.A. 460L-22, 1969 Supplement) authorizes the Secretary of the Interior to accept title to any non-Federal property or interest therein within a unit of the National Park System or miscellaneous area under his administration, in exchange for any federally owned property or interest therein under his jurisdiction which he determines is suitable for exchange or other disposal. The selected land shall be located in the same State as the offered land. Timber lands subject to harvest under a sustained yield program shall not be exchanged. Public hearings will be held in the area where the lands to be exchanged are located, if a written request therefor is submitted to the Secretary or his authorized officer prior to such exchange, by a State or a political subdivision thereof or by a party in interest. The value of the properties exchanged shall be approximately equal, or if they are not approximately equal, the values shall be equalized by payment of cash to the grantor or to the Secretary, as circumstances require. Payment of cash by the Secretary shall be made only from funds appropriated for the acquisition of land for the area.

(2) The term "National Park System" means all federally owned or controlled lands which are administered under the direction of the Secretary of the Interior in accordance with 16 U.S.C. sections 1 and 2-4, and which are grouped into the following descriptive categories: (i) National parks, (ii) national monuments, (iii) national historical parks, (iv) national memorials, (v) national parkways, and (vi) national capital parks.

(3) The term "miscellaneous areas' includes lands under the administrative jurisdiction of another Federal agency, or lands in private ownership, and over which the National Park Service, under the direction of the Secretary of the Interior, pursuant to cooperative agreement, exercises supervision for recreational, historical, or other related purposes, and also any lands under the care and custody of the National Park Service other than those described above.

(g) *North Cascades National Park, Washington.* The Act of October 2, 1968 (82 Stat. 926) establishes the North Cascades National Park, the Ross Lake National Recreation Area, and the Lake Chelan National Recreation Area. The act authorizes the Secretary of the Interior to accept title to any non-Federal property within the boundaries of the park and the recreation areas and in exchange therefor to convey to the grantor of such property and federally owned property under his jurisdiction in the State of Washington which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal, or, if they are not, shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(h) *Redwood National Park, Calif.* The Act of October 2, 1968 (82 Stat. 931) establishes the Redwood National Park. The Secretary of the Interior is authorized to accept title to any non-Federal property within the boundaries of the park, and outside of such boundaries within prescribed limits in exchange for any federally owned property under the jurisdiction of the Bureau of Land Management in California, except property needed for public use and management, which he classifies as suitable for exchange or other disposal. Such federally owned property shall also be available for use by the Secretary in payment of just compensation for real property taken pursuant to the act. The values of the properties exchanged either shall be approximately equal or, if they are not, shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(i) *Biscayne National Monument, Fla.* The Act of October 18, 1968 (Pub. L. 90-606) authorizes the Secretary of the Interior to establish the Biscayne National Monument, and to accept title to any non-Federal property within the boundaries of the national monument and outside such boundaries within prescribed areas, in exchange for any federally owned property under his jurisdiction in the State of Florida which he classifies as suitable for exchange or other disposal. The values of the properties exchanged either shall be approximately equal, or, if they are not, shall be equalized by the payment of cash to the grantor or to the Secretary as circumstances require.

[35 FR 9550, June 13, 1970]

§ 2240.1 General.

Exchanges to eliminate private holdings from national parks and national monuments for which no specific provisions are made in this section have generally reached the limits allowed by enabling legislation. Regulations covering such transactions are, therefore, not codified. Any such transactions will be handled in a manner consistent with the authorizing laws and with the regulations in Part 2200.

[35 FR 9550, June 13, 1970, as amended at 46 FR 1642, Jan. 6, 1981]

PART 2250—WILDLIFE REFUGE EXCHANGES

Sec.
2250.0-3 Authority.
2250.1 Applicable regulations.

§ 2250.0-3 Authority.

(a) Section 4(b)(3) of the Act of October 15, 1966 (80 Stat. 926), authorizes the Secretary of the Interior to acquire lands or interests therein by exchange (1) for acquired lands or public lands under his jurisdiction which he finds suitable for disposition, or (2) for the right to remove, in accordance with such terms and conditions as the Secretary may prescribe, products from the acquired or public lands within the National Wildlife Refuge System. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(b) Section 2(b) of the Act of October 15, 1966 (80 Stat. 926), authorizes the Secretary of the Interior to acquire by purchase, donation, or otherwise, lands or interests therein necessary for the conservation, protection, restoration, and propagation of selected species of native fish that are threatened with extinction.

(c) Section 1 of the Act of August 22, 1957 (71 Stat. 412), as amended (16 U.S.C. 696) authorizes the Secretary of the Interior to acquire, for the National Key Deer Refuge, lands in designated areas in Florida which he finds suitable for the conservation and management of key deer and other wildlife by exchange for any Federally owned property in Florida which he classifies as suitable for exchange or other disposal. The values of the property so exchanged shall be approximately equal, or if they are not approximately equal, the values shall be equalized by the payment of cash to the grantor or to the Secretary as required.

[35 FR 9551, June 13, 1970]

§ 2250.1 Applicable regulations.

Any such transaction will be handled in a manner consistent with the authorizing law and with the regulations in Part 2200.

[35 FR 9551, June 13, 1970, as amended at 46 FR 1642, Jan. 6, 1981]

PART 2270—MISCELLANEOUS EXCHANGES

Subpart 2271—Indian Reservation Exchanges

Sec.
2271.0-3 Authorities.
2271.1 Reservations established by statute.

Subpart 2272—Reclamation Exchanges

Sec.
2272.1 Applicable regulations.

Subpart 2273—National Wild and Scenic Rivers System; National Trails System Exchanges

2273.0-3 Authority.

Subpart 2274—National Conservation Area Exchanges

2274.0-3 Authority.
2274.1 Procedures.

Subpart 2271—Indian Reservation Exchanges

§ 2271.0-3 Authorities.

(a) *Executive order reservations.* The Act of April 21, 1904 (33 Stat. 211; 43 U.S.C., sec. 149), authorizes the Secretary of the Interior to exchange any vacant, nonmineral, nontimbered, surveyed public lands located in the same State as the offered lands for any privately owned lands over which an Indian reservation has been extended by Executive order. The offered and selected lands must be approximately equal both in value and area. The applicant must pay all costs of consummating the exchange.

(b) *San Juan, McKinley, and Valencia Counties, N. Mex.* Section 13 of the Act of March 3, 1921 (41 Stat. 1239).

(c) *Apache, Coconino, and Navajo Counties, Ariz.* Section 2 of the Act of June 14, 1934 (48 Stat. 961), as supplemented by the Act of May 9, 1938 (52 Stat. 300).

[35 FR 9551, June 13, 1970]

§ 2271.1 Reservations established by statute.

Exchanges and lieu selections involving lands within Indian reservations occur infrequently. Regulations covering such transactions are, therefore, not codified. Any such transactions shall be handled in a manner consistent with the applicable statutes and with the general regulations in Part 2200.

[35 FR 9551, June 13, 1970, as amended at 46 FR 1642, Jan. 6, 1981]

Subpart 2272—Reclamation Exchanges

§ 2272.1 Applicable regulations.

(a) Regulations for exchange under the Act of August 13, 1953 (67 Stat. 566; 43 U.S.C. 451-451K), are in Part 406 of this title and for exchanges under the Act of May 25, 1926 (44 Stat. 648; 43 U.S.C. 423c), are in §§ 403.6-403.11 of this title.

[35 FR 9552, June 13, 1970]

Subpart 2273—National Wild and Scenic Rivers System; National Trails System Exchanges

§ 2273.0-3 Authority.

(a) *National wild and scenic rivers system.* The Act of October 2, 1968 (82 Stat. 906) institutes a national wild and scenic rivers system, designates the initial components of that system and provides for additional components to be added to the system. The Secretary of the Interior and the Secretary of Agriculture are each authorized to acquire lands within any component of the system administered by him to an average of not more than 100 acres per mile on both sides of the river. The appropriate Secretary is authorized to accept title to non-Federal property within the authorized boundaries of any federally administered component of the system in exchange for any federally owned property under his jurisdiction within the State in which the component lies and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal, or, if they are not, shall be equalized by the payment of cash to the grantor or the Secretary as the circumstances require.

(b) *National trails system.* The Act of October 2, 1968 (82 Stat. 919), provides for the establishment and designation of trails by the Secretary of the Interior or the Secretary of Agriculture, each on lands administered by him.

(1) The Act authorizes the Secretary of the Interior to accept title to any non-Federal property within the trail

right-of-way in exchange for any federally owned property under his jurisdiction which is located in the State and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal or, if they are not, shall be equalized by the payment of cash to the grantor or the Secretary as the circumstances require.

(2) The Act authorizes the Secretary of Agriculture to use authorities and procedures available to him in connection with exchanges of national forest lands.

(3) When an application involves the selection of public domain land outside of national forests and under the administrative jurisdiction of the Bureau of Land Management, the proponents shall comply with the regulations in Part 2200.

[35 FR 9552, June 13, 1970, as amended at 46 FR 1642, Jan. 6, 1981]

Subpart 2274—National Conservation Area Exchanges

§ 2274.0-3 Authority.

The Act of October 21, 1970, (16 U.S.C. 460y) provides for the establishment of the King Range National Conservation Area in the State of California and authorizes the Secretary of the Interior to acquire land or interests in land by exchange under the Act.

[41 FR 15851, Apr. 15, 1976]

§ 2274.1 Procedures.

(a) In making exchanges within the King Range National Conservation Area, the authorized officer may accept title to non-Federal land or interest in land within the Area defined in 16 U.S.C. 460y-8, or additions made thereto, and convey to the grantor of such land or interest in land an equal value of surveyed, unappropriated and unreserved public land or interest in land, in accordance with the following:

(1) The authorized officer shall have determined that the exchange is in the public interest.

(2) The public lands offered in exchange be in Humboldt and/or Mendocino County, California, and shall have been classified by the authorized officer for exchange.

(3) If the value of the offered lands or interests in land is at least equal to two-thirds of the value of the public land or interests in land, the exchange may be completed by payment of the difference in value to the Bureau of Land Management or the submittal of a cash deposit or a performance bond in an amount at least equal to the difference in value in order to assure that additional lands acceptable to the authorized officer and at least equal to the difference in value will be conveyed to the Government within a definite time to be specified by the authorized officer. If the value of the public lands offered in exchange for non-Federal lands or interests in non-Federal lands is at least equal to two-thirds of the value of the non-Federal lands, the exchange may be completed upon payment by the authorized officer of the difference in value.

(b) Either party to an exchange may reserve minerals, easements, or rights of use either for its own benefits, for the benefit of third parties, or for the benefit of the general public. Any such reservation, whether in lands conveyed to or by the United States, shall be subject to such reasonable conditions respecting ingress and egress and the use of the surface of the land as may be deemed necessary by the authorized officer. When minerals are reserved in lands conveyed by the United States, any person who prospects for or acquires the right to mine and remove such reserved mineral deposits shall be liable to the surface owners according to their respective interests for any actual damage to the surface or to the improvements thereon resulting from prospecting, entering, or mining operations.

Prior to entering lands in non-Federal ownership, such person shall either obtain the surface owner's written consent or file with the authorized officer a good and sufficient bond or undertaking to the United States in an amount acceptable to the authorized officer for the use and benefit of the surface owner to secure payment of such damages as may be determined in an action brought on the bond or undertaking in a court of competent jurisdiction. Where written consent is not obtained, a letter request shall be filed with the authorized officer for a determination of the amount of the bond or undertaking. A copy of such request will be served on the surface owner or owners by certified mail.

(c) Upon acceptance of title, any lands or interests in lands acquired by the United States by exchange under the authority of Section 5 of the Act of October 21, 1970, shall become public lands, and shall become a part of the King Range National Conservation Area subject to all the laws and regulations applicable thereto without further order of the authorized officer.

(d) Any exchange transaction will be handled in a manner consistent with the authorizing law and regulations in Part 2200 of this subchapter.

[41 FR 15851, Apr. 15, 1976]

Group 2300—Withdrawals

PART 2300—LAND WITHDRAWALS

Subpart 2300—Withdrawals, General

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AUTHORITY: 43 U.S.C. 1201; 43 U.S.C. 1740; Executive Order No. 10355 (17 FR 4831, 4833).

SOURCE: 46 FR 5796, Jan. 19, 1981, unless otherwise noted.

Subpart 2300—Withdrawals, General

§ 2300.0-1 Purpose.

(a) These regulations set forth procedures implementing the Secretary of the Interior's authority to process Federal land withdrawal applications and, where appropriate, to make, modify or extend Federal land withdrawals. Procedures for making emergency withdrawals are also included.

(b) The regulations do not apply to withdrawals that are made by the Secretary of the Interior pursuant to an act of Congress which directs the issuance of an order by the Secretary. Likewise, procedures applicable to withdrawals authorized under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(b); 1281), and procedures relating to the Secretary's authority to establish Indian reservations or to add lands to the reservations pursuant to special legislation or in accordance with section 7 of the Act of June 18, 1934 (25 U.S.C. 467), as supplemented by section 1 of the Act of May 1, 1936 (25 U.S.C. 473a), are not included in these regulations.

(c) General procedures relating to the processing of revocation of withdrawals and relating to the relinquishment of reserved Federal land areas are not included in this part.

§ 2300.0-3 Authority.

(a)(1) Section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714) gives the Secretary of the Interior general authority to make, modify, extend or revoke withdrawals, but only in accordance with the provisions and limitations of that section. Among other limitations, the Federal Land Policy and Management Act of 1976 provides that the Secretary of the Interior does not have authority to:

(i) Make, modify or revoke any withdrawal created by an Act of Congress;

(ii) Make a withdrawal which can be made only by an Act of Congress;

(iii) Modify or revoke any withdrawal creating national monuments under the Act of June 8, 1906 (16 U.S.C. 431-433), sometimes referred to as the Antiquities Act;

(iv) Modify or revoke any withdrawal which added lands to the National Wildlife Refuge System prior to October 21, 1976, the date of approval of the Federal Land Policy and Management Act of 1976 or which thereafter adds lands to that System under the terms of that Act. In this connection, nothing in the Federal Land Policy and Management Act of 1976 is intended to modify or change any provision of the Act of February 27, 1976 (16 U.S.C. 668 dd(a)).

(2) Executive Order 10355 of May 26, 1952 (17 FR 4831), confers on the Secretary of the Interior all of the delegable authority of the President to make, modify and revoke withdrawals and reservations with respect to lands of the public domain and other lands owned and controlled by the United States in the continental United States or Alaska.

(3) The Act of February 28, 1958 (43 U.S.C. 155-158), sometimes referred to as the Engle Act, places on the Secretary of the Interior the responsibility to process Department of Defense applications for national defense withdrawals, reservations or restrictions aggregating 5,000 acres or more for any one project or facility. These withdrawals, reservations or restrictions may only be made by an act of Congress, except in time of war or national emergency declared by the President or the Congress and except as otherwise expressly provided in the Act of February 28, 1958.

(4) Section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)) authorizes the Secretary of the Interior to regulate the management of the public lands as defined in the Act through instruments, such as memorandum of understanding, which the Secretary deems appropriate.

(5) Section 1326(a) of the Alaska National Interest Lands Conservation Act (Pub. L. 96-487), authorizes the President and the Secretary to make withdrawals exceeding 5,000 acres, in the aggregate, in the State of Alaska subject to the provisions that such withdrawals shall not become effective until notice is provided in the FEDERAL REGISTER and to both Houses of the Congress and such withdrawals shall terminate unless Congress passes a Joint Resolution of approval within one year after the notice of withdrawal has been submitted to the Congress.

(b) The following references do not afford either withdrawal application processing or withdrawal authority but are provided as background information.

(1) Executive Order 6910 of November 26, 1934, and Executive Order 6964 of February 5, 1935, as modified, withdrew sizable portions of the public lands for classification and conservation. These lands and the grazing districts estalished under the Taylor Grazing Act of 1934, as amended, are subject to the classification and opening procedures of section 7 of the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315f); however, they are not closed to the operation of the mining or mineral leasing laws unless separately withdrawn or reserved, classified for retention from disposal, or precluded from mineral leasing or mining location under other authority.

(2) The Classification and Multiple Use Act of September 19, 1964 (43 U.S.C. 1411-1418), authorized the Secretary of the Interior through the Bureau of Land Management for retention or disposal under Federal own-

ership and management. Numerous classification decisions based upon this statutory authority were made by the Secretary of the Interior. For the effect of these classification with regard to the disposal and leasing laws of the United States, see Subparts 2440 and 2461 of this title.

(3) Section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) provides for land use planning and resultant management decisions which may operate to totally eliminate a particular land use, including one or more "principal or major uses," as defined in the Act. Withdrawals made pursuant to section 204 of the Federal Land Policy and Management Act of 1976 may be used in appropriate cases, to carry out management decisions, except that "public lands," as defined in the Act, can be removed from or restored to the operation of the Mining Law of 1872, as amended, or transferred to another department, agency or office, only by withdrawal action pursuant to section 204 of the Federal Land Policy and Management Act of 1976 or other action pursuant to applicable law.

(4) The first proviso of section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732(b)) provides, in part, that unless otherwise provided for by law, the Secretary of the Interior may permit Federal departments and agencies to use, occupy and develop public lands *only* through rights-of-way under section 507 of the Act (43 U.S.C. 1767); withdrawals under section 204 of the Act (43 U.S.C. 1714); and, where the proposed use and development are similar or closely related to the programs of the Secretary for the public lands involved, cooperative agreements under section 307(b) of the Act (43 U.S.C. 1737(b)).

(5) Section 701(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 note) provides that all withdrawals, reservations, classifications and designations in effect on October 21, 1976, the effective date of the Act, shall remain in full force and effect until modified under the provisions of the Act or other applicable law.

§ 2300.0-5 Definitions.

As used in this part, the term:

(a) "Secretary" means the Secretary of the Interior or a secretarial officer subordinate to the Secretary who has been appointed by the President by and with the advice and consent of the Senate and to whom has been delegated the authority of the Secretary to perform the duties described in this part to be performed by the "Secretary."

(b) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part to be performed by the "authorized officer."

(c) "Act" means the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 et seq.), unless otherwise specified.

(d) "Lands" includes both upland and submerged land areas and any right or interest in such areas. To the extent provided in section 1 of the Act of February 28, 1958 (43 U.S.C. 155), the term also includes offshore waters.

(e) "Cultural resources" means those fragle and nonrenewable physical remains of human activity found in districts, sites, structures, burial mounds, petroglyphs, artifacts, objects, ruins, works of art, architecture or natural settings or features which were important to prehistoric, historic or other land and resource use events.

(f) "Archeological areas/resources" means sites or areas containing important evidence or the physical remains of former but now extinct cultural groups, their skeletons, settlements, implements, artifacts, monuments and inscriptions.

(g) "Resource use" means a land use having as its primary objective the preservation, conservation, enhancement or development of:

(1) Any renewable or nonrenewable natural resource indigenous to a particular land area, including, but not limited to, mineral, timber, forage, water, fish or wildlife resources, or

(2) Any resource value associated with a particular land area, including, but not limited to, watershed, power, scenic, wilderness, clean air or recreational values. The term does not in-

clude military or other governmental activities requiring land sites only as an incidental means to achieving an end not related primarily to the preservation, conservation, enhancement or development of natural resources or resource values indigenous to or associated with a particular land area.

(h) "Withdrawal" means withholding an area of Federal land from settlement, sale, location, or entry under some or all of the general land laws, for the purpose of limiting activites under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land, other than "property" governed by the Federal Property and Administrative Services Act (40 U.S.C. 472), from one department, bureau or agency to another department, bureau or agency.

(i) "Department" means a unit of the Executive branch of the Federal Government which is headed by a member of the President's Cabinet.

(j) "Agency" means a unit of the Executive branch of the Federal Government which is not within a Department.

(k) "Office" means an office or bureau of the Department of the Interior.

(l) "Applicant" means any Federal department, agency or office.

(m) "Segregation" means the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of the public land laws, including the mining laws, pursuant to the exercise by the Secretary of regulatory authority to allow for the orderly administration of the public lands.

(n) "Legal description" means a written land description based upon either an approved and filed Federal land survey executed as a part of the United States Public Land Survey System or, where specifically authorized under Federal law, upon a protraction diagram. In the absence of the foregoing, the term means a written description, approved by the authorized officer, which defines the exterior boundaries of a tract of land by reference to a metes and bounds survey or natural or other monuments.

(o) "Modify" or "modification" does not include, for the purposes of section 204 of the act (43 U.S.C. 1714), the addition of lands to an existing withdrawal or the partial revocation of a withdrawal.

(p) "Withdrawal petition" means a request, originated within the Department of the Interior and submitted to the Secretary, to file an application for withdrawal.

(q) "Withdrawal proposal" means a withdrawal petition approved by the Secretary.

Subpart 2310—Withdrawals, General—Procedure

§ 2310.1 Procedures—general.

(a) The basic steps leading up to the making, modification or extension of a withdrawal, except emergency withdrawals, are:

(1) Preapplication consultation;

(2) Obtaining Secretarial approval of a withdrawal petition in appropriate cases;

(3) Submission for filing of an application for a requested withdrawal action;

(4) Publication in the FEDERAL REGISTER of a notice stating that a withdrawal proposal has been made or that an application has been submitted for filing.

(5) Negotiations between the applicant and the authorized officer as well as the accomplishment of investigations, studies and analyses which may be required to process an application.

(6) Preparation of the case file to be considered by the Secretary, including the authorized officer's findings and recommendations;

(7) Transmittal of the case file to the Director, Bureau of Land Management, for the Director's review and decision regarding the findings and recommendations of the authorized officer;

(8) Transmittal of the case file to the Secretary.

(9) Publication of a public land order or a notice of denial signed by the Secretary. If the application seeks a national defense withdrawal that may

only be made by an act of Congress, the Secretary will transmit to the Congress proposed legislation along with the Secretary's recommendations, and documentation relating thereto.

§ 2310.1-1 Preapplication consultation.

A potential applicant should contact the appropriate State office of the Bureau of Land Management well in advance of the anticipated submission date of an application. Early consultation can familiarize the potential applicant with the responsibilities of an applicant, the authorized officer and the Secretary. Early consultation also will assist in determining the need for a withdrawal, taking possible alternatives into account, increase the likelihood that the applicant's needs will be considered in ongoing land use planning, assist in determining the extent to which any public lands that may be involved would have to be segregated if an application is submitted; and result in preliminary determinations regarding the scheduling of various investigations, studies, analyses, public meetings and negotiations that may be required for a withdrawal. Studies and analyses should be programmed to ensure their completion in sufficient time to allow the Secretary or the Congress adequate time to act on the application before the expiration of the segregation period.

§ 2310.1-2 Submission of applications.

(a) Applications for the making, modification or extension of a withdrawal shall be submitted for filing, in duplicate, in the proper Bureau of Land Management office, as set forth in § 1821.2-1 of this title, except for emergency withdrawal requests and applications that are classified for national security reasons. Requests for emergency withdrawals and applications that are classified for national security reasons shall be submitted, in duplicate, in the Office of the Secretary, Department of the Interior, Washington, D.C. 20240.

(b) Before the authorized officer can take action on a withdrawal proposal, a withdrawal application in support thereof shall be submitted. The application may be submitted simultaneously with the making of a withdrawal proposal, in which case only the notice required by § 2310.3-1(a) of this title, referencing both the application and the withdrawal proposal, shall be published.

(c) No specific form is required, but, except as otherwise provided in § 2310.3-6(b) of this title, the application shall contain at least the following information:

(1) The name and address of the applicant. Where the organization intending to use the lands is different from the applicant, the name and address of such using agency shall also be included.

(2) If the applicant is a department or agency other than the Department of the Interior or an office thereof, a statement of the delegation or delegations of authority of the official acting on behalf of the department or agency submitting the application, substantiating that the official is empowered to act on behalf of the head of the department or agency in connection with all matters pertaining to the application.

(3) If the lands which are subject to an application are wholly or partially under the administration of any department or agency other than the Department of the Interior, the Secretary shall make or modify a withdrawal only with the consent of the head of the department or agency concerned, except in the case of an emergency withdrawal. In such case, a copy of the written consent shall accompany the application. The requirements of section (e) of Executive Order 10355 (17 FR 4831), shall be complied with in those instances where the Order applies.

(4) The type of withdrawal action that is being requested (See § 2300.0-5(h) of this title) and whether the application pertains to the making, extension or modification of a withdrawal.

(5) A description of the lands involved in the application, which shall consist of the following:

(i) A legal description of the entire land area that falls within the exterior boundaries of the affected area and the total acreage of such lands;

(ii) A legal description of the lands, Federal or otherwise, within the exterior boundaries that are to be excepted from the requested action, and after deducting the total acreage of all the excepted lands, the net remaining acreage of all Federal lands (as well as all non-Federal lands which, if they should be returned to or should pass to Federal ownership, would become subject to the withdrawal) within the exterior boundaries of the affected land areas;

(iii) In the case of a national defense withdrawal which can only be made by an act of Congress, sections 3(2) and 3(3) of the Act of February 28, 1958 (43 U.S.C. 157 (2), (3)) shall be complied with in lieu of subparagraphs (5) (i) and (ii) of this paragraph.

(6) If the application is for a withdrawal that would overlap, or that would add lands to one or more existing withdrawals, the application shall also contain:

(i) An identification of each of the existing withdrawals, including the project name, if any, the date of the withdrawal order, the number and type of order, if known, or, in lieu of the foregoing, a copy of the order;

(ii) As to each existing withdrawal that would be overlapped by the requested withdrawal, the total area and a legal description of the area that would be overlapped; and

(iii) The total acreage, Federal or otherwise, that would be added to the existing withdrawal, if the new application is allowed.

(7) The public purpose or statutory program for which the lands would be withdrawn. If the purpose or program for which the lands would be withdrawn is classified for national security reasons, a statement to that effect shall be included; but, if at all possible, a general description of the use to which the lands would be devoted, if the requested withdrawal is allowed, should be included. In the case of applications that are not classified for national security reasons, an analysis of the manner in which the lands as well as their natural resources and resource values would be used to implement the purpose or program shall be provided.

(8) The extent to which the lands embraced in the application are requested to be withheld from settlement, sale, location or entry under the public land laws, including the mining laws, together with the extent to which, and the time during which, the lands involved in the application would be temporarily segregated in accordance with § 2310.2 of this title.

(9) The type of temporary land use that, at the discretion of the authorized officer, may be permitted or allowed during the segregation period, in accordance with § 2310.2 of this title.

(10) An analysis and explanation of why neither a right-of-way under section 507 of the act (43 U.S.C. 1767), nor a cooperative agreement under sections 302(b) (43 U.S.C. 1732(b)) and 307(b) (43 U.S.C. 1737(b)) of the act would adequately provide for the proposed use.

(11) The duration of the withdrawal, with a statement in justification thereof (see § 2310.3-4 of this title). Where an extension of an existing withdrawal is requested, its duration may not exceed the duration of the existing withdrawal.

(12) A statement as to whether any suitable alternative sites are available for the proposed use or for uses which the requested withdrawal action would displace. The statement shall include a study comparing the projected costs of obtaining each alternative site in suitable condition for the intended use, as well as the projected costs of obtaining and developing each alternative site for uses that the requested withdrawal action would displace.

(13) A statement as to whether water will or will not be needed to fulfill the purpose of the requested withdrawal action.

(14) The place where records relating to the application can be examined by interested persons.

(d) Except in the case of an emergency withdrawal, if the preceding application requirements have not been met, or if an application seeks an action that is not within the scope of the Secretary's authority, the application may be rejected by the authorized officer as a defective application.

§ 2310.1-3 Submission of withdrawal petitions.

(a) Withdrawal petitions shall be submitted to the Director, Bureau of Land Management, for transmittal to the Secretary.

(b) No specific form is required, but the petition shall contain at least the following information:

(1) The office originating the petition;

(2) The type and purpose of the proposed withdrawal action (See § 2300.0-5(h) of this title) and whether the petition pertains to the making, extension or modification of a withdrawal;

(3) A legal description of the entire land area that falls within the exterior boundaries affected by the petition, together with the total acreage of such lands, and a map of the area;

(4) The extent to which and the time during which any public lands that may be involved in the petition would be temporarily segregated and the temporary land uses that may be permitted during the segregation period, in accordance with § 2310.2 of this title; and

(5) A preliminary identification of the mineral resources in the area.

(c) Except in the case of petitions seeking emergency withdrawals, if a petition is submitted simultaneously with a withdrawal application, the information requirements pertaining to withdrawal applications (See § 2310.1-2 of this title), shall supersede the requirements of this section.

(d) If a petition seeks an emergency withdrawal under the provisions of section 204(e) of the act, the petition shall be filed simultaneously with an application for withdrawal. In such instances, the petition/application shall provide as much of the information required by §§ 2310.1-2(c) and 2310.3-2(b) of this title as is available to the petitioner when the petition is submitted.

(e) Upon the approval by the Secretary of a petition for withdrawal, the petition shall be considered as a Secretarial proposal for withdrawal, and notice of the withdrawal proposal shall be published immediately in the Federal Register in accordance with § 2310.3-1(a) of this title. If a petition which seeks an emergency withdrawal is approved by the Secretary, the publication and notice provisions pertaining to emergency withdrawals shall be applicable. (See § 2310.5 of this title.)

§ 2310.1-4 Cancellation of withdrawal applications or withdrawal proposals and denial of applications.

(a) Withdrawal or extension applications and proposals shall be amended promptly to cancel the application or proposal, in whole or in part, with respect to any lands which the applicant, in the case of applications, or the office, in the case of proposals, determines are no longer needed in connection with a requested or proposed action. The filing of a cancellation notice in each such case shall result in the termination of the segregation of the public lands that are to be eliminated from the withdrawal application or withdrawal proposal. (See § 2310.2-1 of this title)

(b) The Secretary may deny an application if the costs (as defined in section 304(b) of the act (43 U.S.C. 1734(b)) estimated to be incurred by the Department of the Interior would, in the judgment of the Secretary, be excessive in relation to available funds appropriated for processing applications requesting a discretionary withdrawal, or a modification or extension of a withdrawal.

§ 2310.2 Segregative effect of withdrawal applications or withdrawal proposals.

The following provisions apply only to applications or proposals to withdraw lands and not to applications or proposals seeking to modify or extend withdrawals.

(a) *Withdrawal applications or withdrawal proposals submitted on or after October 21, 1976*—Within 30 days of the submission for filing of a withdrawal application, or whenever a withdrawal proposal is made, a notice stating that the application has been submitted or that the proposal has been made, shall be published in the Federal Register by the authorized officer. Publication of the notice in the Federal Register shall segregate the lands described in the application or proposal from settlement, sale, location or entry under the public land laws, including the mining laws, to the extent specified in the notice, for 2 years from the date of publication of the notice unless the segregative effect is terminated sooner in accordance with the provisions of this part. The notices published pursuant to the provisions of this section shall be the same notices required by § 2310.3-1 of this title. Publication of a notice of a withdrawal application that is based on a prior withdrawal proposal, notice of which was published in the FEDERAL REGISTER, shall not operate to extend the segregation period which commenced upon the publication of the prior withdrawal proposal.

(b) *Withdrawal applications submitted before October 21, 1976*—The public lands described in a withdrawal application filed before October 21, 1976, shall remain segregated through October 20, 1991, from settlement, sale, location or entry under the public land laws, including the mining laws, to the extent specified in the FEDERAL REGISTER notice or notices that pertain to the application, unless the segregative effect of the application is terminated sooner in accordance with other provisions of this part. Any amendment made on or after October 21, 1976, of a withdrawal application submitted before October 21, 1976, for the purpose of adding Federal lands to the lands described in a previous application, shall require the publication in the FEDERAL REGISTER, within 30 days of receipt of the amended application, of a notice of the amendment of the withdrawal application. All of the lands described in the amended application which includes those lands described in the original application shall be segregated for 2 years from the date of publication of the notice of the amended application in the FEDERAL REGISTER.

(c) Applications for licenses, permits, cooperative agreements or other discretionary land use authorizations of a temporary nature that are filed on or after October 21, 1976, regarding lands involved in a withdrawal application or a withdrawal proposal and that are listed in the notices required by § 2310.3-2 of this title as permissible during the segregation period, may be approved by the authorized officer while the lands remain segregated.

(d) Except as provided in paragraph (c) of this section, applications for the use of lands involved in a withdrawal application or a withdrawal proposal, the allowance of which is discretionary, shall be denied.

(e) The temporary segregation of lands in connection with a withdrawal application or a withdrawal proposal shall not affect in any respect Federal agency administrative jurisdiction of the lands, and the segregation shall not have the effect of authorizing or permitting any use of the lands by the applicant or using agency.

§ 2310.2-1 Termination of the segregative effect of withdrawal applications or withdrawal proposals.

(a) The publication in the FEDERAL REGISTER of an order allowing a withdrawal application, in whole or in part, shall terminate the segregative effect of the application as to those lands withdrawn by the order.

(b) The denial of a withdrawal application, in whole or in part, shall result in the termination of the segregative effect of the application or proposal as to those lands where the withdrawal is disallowed. Within 30 days following the decision to disallow the application or proposal, in whole or in part, the authorized officer shall publish a notice in the FEDERAL REGISTER specifying the reasons for the denial and the date that the segregative period terminated. The termination date of the segregation period shall be noted promptly on the public land status records on or before the termination date.

(c) The cancellation, in whole or in part, of a withdrawal application or a withdrawal proposal shall result in the termination of the segregative effect of the application or proposal, as to those lands deleted from the application or proposal. The authorized officer shall publish a notice in the FEDERAL REGISTER, within 30 days following the date of receipt of the cancellation, specifying the date that the segregation terminated. The termination date of the segregation shall be noted promptly on the public land status records. If the cancellation applies to only a portion of the public lands that are described in the withdrawal application or withdrawal proposal, then the lands that are not affected by the cancellation shall remain segregated.

(d) The segregative effect resulting from the publication on or after October 21, 1976, of a Federal Register notice of the submission of a withdrawal application or the making of a withdrawal proposal shall terminate 2 years after the publication date of the Federal Register notice unless the segregation is terminated sooner by other provisions of this section. A notice specifying the date and time of termination shall be published in the Federal Register by the authorized officer 30 days in advance of the termination date. The public land status records shall be noted as to the termination date of the segregation period on or before the termination date. Such a termination shall not affect the processing of the withdrawal application.

(e) The segregative effect resulting from the submission of a withdrawal application or withdrawal proposal before October 21, 1976, shall terminate on October 20, 1991, unless the segregation is terminated sooner by other provisions of this part. A notice specifying the date and time of termination shall be published in the Federal Register by the authorized officer 30 days in advance of October 20, 1991. The public land status records shall be noted as to the termination date of the segregation period on or before October 20, 1991.

§ 2310.3 Action on withdrawal applications and withdrawal proposals, except for emergency withdrawals.

§ 2310.3-1 Publication and public meeting requirements.

(a) When a withdrawal proposal is made, a notice to that effect shall be published immediately in the Federal Register. The notice shall contain the information required by § 2310.1-3 of this title. In the event a withdrawal petition, which subsequently becomes a withdrawal proposal, is submitted simultaneously with a withdrawal application, the information requirements for notices pertaining to withdrawal applications (See paragraph (b) of this section) shall supersede the information requirements of this paragraph. However, in such instances, the notice required by paragraph (b) of this section shall be published immediately without regard to the 30-day period allowed for the filing for publication in the Federal Register of withdrawal application notices.

(b)(1) Except for emergency withdrawals and except as otherwise provided in paragraph (a) of this section, within 30 days of the submission for filing of a withdrawal, extension or modification application, the authorized officer shall publish in the Federal Register a notice to that effect. The authorized officer also shall publish the same notice in at least one newspaper having a general circulation in the vicinity of the lands involved and, with the cooperation and assistance of the applicant, when appropriate, shall provide sufficient publicity to inform the interested public of the requested action.

(2) The notice shall contain, in summary form, the information required by § 2310.1-2 of this title, except that the authorized officer may exclude the information required by § 2310.1-2(c)(2) of this title, and as much of the descriptive information required by §§ 2310.1-2(c) (5) and (6) of this title as the authorized officer considers appropriate. The notice shall:

(i) Provide a legal description of the lands affected by the application, together with the total acreage of such lands;

(ii) Specify the extent to which and the time during which any lands that may be involved may be segregated in accordance with § 2310.2 of this title;

(iii) Identify the temporary land uses that may be permitted or allowed during the segregation period as provided for in § 2310.2(c) of this title;

(iv) Provide for a suitable period of at least 90 days after publication of the notice, for public comment on the requested action;

(v) Solicit written comments from the public as to the requested action and provide for one or more public meetings in relation to requested actions involving 5,000 or more acres in the aggregate and, as to requested actions involving less than 5,000 acres, solicit and evaluate the written comments of the public as to the requested action and as to the need for public meetings;

(vi) State, in the case of a national defense withdrawal which can only be made by an act of Congress, that if the withdrawal is to be made, it will be made by an act of Congress;

(vii) Provide the address of the Bureau of Land Management office in which the application and the case file pertaining to it are available for public inspection and to which the written comments of the public should be sent;

(viii) State that the application will be processed in accordance with the regulations set forth in Part 2300 of this title;

(ix) Reference, if appropriate, the FEDERAL REGISTER in which the notice of a withdrawal proposal, if any, pertaining to the application was published previously;

(x) Provide such additional information as the authorized officer deems necessary or appropriate.

(c)(1) In determining whether a public meeting will be held on applications involving less than 5,000 acres of land, the authorized officer shall consider whether or not:

(i) A large number of persons have expressed objections to or suggestions regarding the requested action;

(ii) The objections or suggestions expressed appear to have merit without regard to the number of persons responding;

(iii) A public meeting can effectively develop information which would otherwise be difficult or costly to accumulate;

(iv) The requested action, because of the amount of acreage involved, the location of the affected lands or other relevant factors, would have an important effect on the public, as for example, the national or regional economy;

(v) There is an appreciable public interest in the lands or their use, as indicated by the records of the Bureau of Land Management·

(vi) There is prevailing public opinion in the area that favors public meetings or shows particular concern over withdrawal actions; and

(vii) The applicant has requested a public meeting.

(2) A public meeting, whether required or determined by the authorized officer to be necessary, shall be held at a time and place convenient to the interested public, the applicant and the authorized officer. A notice stating the time and place of the meeting, shall be published in the FEDERAL REGISTER and in at least one newspaper having a general circulation in the vicinity of lands involved in the requested action, at least 30 days before the scheduled date of the meeting.

§ 2310.3-2 Development and processing of the case file for submission to the Secretary.

(a) Except as otherwise provided in § 2310.3-6(b) of this title, the information, studies, analyses and reports identified in this paragraph that are required by applicable statutes, or which the authorized officer determines to be required for the Secretary or the Congress to make a decision or recommendation on a requested withdrawal, shall be provided by the applicant. The authorized officer shall assist the applicant to the extent the authorized officer considers it necessary or appropriate to do so. The qualifications of all specialists utilized by either the authorized officer or the applicant to prepare the information, studies, analyses and reports shall be provided.

(b) The information, studies, analyses and reports which, as appropriate, shall be provided by the applicant shall include:

(1) A report identifying the present users of the lands involved, explaining how the users will be affected by the proposed use and analyzing the manner in which existing and potential resource uses are incompatible with or conflict with the proposed use of the lands and resources that would be affected by the requested action. The report shall also specify the provisions that are to be made for, and an economic analysis of, the continuation, alteration or terminaton of existing uses. If the provisions of

§ 2310.3-5 of this title are applicable to the proposed withdrawal, the applicant shall also furnish a certification that the requirements of that section shall be satisfied promptly if the withdrawal is allowed or authorized.

(2) If the application states that the use of water in any State will be necessary to fulfill the purposes of the requested withdrawal, extension or modification, a report specifying that the applicant or using agency has acquired, or proposes to acquire, rights to the use of the water in conformity with applicable State laws and procedures relating to the control, appropriation, use and distribution of water, or whether the withdrawal is intended to reserve, pursuant to Federal law, sufficient unappropriated water to fulfill the purposes of the withdrawal. Water shall be reserved pursuant to Federal law for use in carrying out the purposes of the withdrawal only if specifically so stated in the relevant withdrawal order, as provided in § 2310.3-3(b) of this title and only to the extent needed for the purpose or purposes of the withdrawal as expressed in the withdrawal order. The applicant shall also provide proof of notification of the involved State's department of water resources when a land use needed to carry out the purposes of the requested withdrawal will involve utilization of the water resources in a State. As a condition to the allowance of an order reserving water, the applicant shall certify to the Secretary that it shall quantify the amount of water to be reserved by the order.

(3) An environmental assessment, an environmental impact statement or any other documents as are needed to meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), and the regulations applicable thereto. The authorized officer shall participate in the development of environmental assessments or impact statements. The applicant shall designate the Bureau of Land Management as a cooperating agency and shall comply with the requirements of the regulations of the Council on Environmental Quality. The Bureau of Land Management shall, at a minimum, independently evaluate and review the final product. The following items shall either be included in the assessment or impact statement, or they may be submitted separately, with appropriate cross references.

(i) A report on the identification of cultural resources prepared in accordance with the requirements of 36 CFR Part 800, and other applicable regulations.

(ii) An identification of the roadless areas or roadless islands having wilderness characteristics, as described in the Wilderness Act of 1964 (16 U.S.C. 1131, et seq.), which exist within the area covered by the requested withdrawal action.

(iii) A mineral resource analysis prepared by a qualified mining engineer, engineering geologist or geologist which shall include, but shall not be limited to, information on: General geology, known mineral deposits, past and present mineral production, mining claims, mineral leases, evaluation of future mineral potential and present and potential market demands.

(iv) A biological assessment of any listed or proposed endangered or threatened species, and their critical habitat, which may occur on or in the vicinity of the involved lands, prepared in accordance with the provisions of section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1536), and regulations applicable thereto, if the Secretary determines that assessment is required by law.

(v) An analysis of the economic impact of the proposed uses and changes in use associated with the requested action on individuals, local communities, State and local government interests, the regional economy and the Nation as a whole.

(vi) A statement as to the extent and manner in which the public participated in the environmental review process.

(4) A statement with specific supporting data, as to:

(i) Whether the lands involved are floodplains or are considered wetlands; and

(ii) Whether the existing and proposed uses would affect or be affected by such floodplains or wetlands and, if so, to what degree and in what manner. The statement shall indicate whether, if the requested action is allowed, it will comply with the provisions of Executive Orders 11988 and 11990 of May 24, 1977 (42 FR 26951; 26961).

(5) A statement of the consultation which has been or will be conducted with other Federal departments or agencies; with regional, State and local Government bodies; and with individuals and nongovernmental groups regarding the requested action.

(c) Prior to final action being taken in connection with an application, the applicant shall prepare, with the guidance and participation of the authorized officer, and subject to the approval of the authorized officer, the Secretary and other affected departments, agencies or offices, a resource management plan and implementation program regarding the use and management of any public lands with their related resources uses. Consideration shall be given to the impact of the proposed reservation on access to and the use of the land areas that are located in the vicinity of the lands proposed to be withdrawn. Where appropriate, the plan and program will be implemented by means of a memorandum of understanding between the affected agencies. Any allocation of jurisdiction between the agencies shall be effected in the public land order or legislation. In those cases where the Secretary, acting through the Bureau of Land Management, would continue to exercise partial jurisdiction, resource management of withdrawn areas may be governed by the issuance of management decisions by the Bureau of Land Management to implement land use plans developed or revised under the land use planning requirements of section 202 of the act (43 U.S.C. 1712).

(d) In regard to national defense withdrawals that can only be made by an act of Congress, and to the extent that they are not otherwise satisfied by the information, studies, analyses and reports provided in accordance with the provisions of this section, the provisions of section 3(7) of the Act of February 28, 1958 (43 U.S.C. 157(7)), shall be complied with.

(e) The authorized officer shall develop preliminary findings and recommendations to be submitted to the Secretary, advise the applicant of the findings and recommendations, and provide the applicant an opportunity to discuss any objections thereto which the applicant may have.

(f) Following the discussion process, or in the absence thereof, the authorized officer shall prepare the findings, keyed specifically to the relevant portions of the case file, and the recommendations to the Secretary in connection with the application. The authorized officer also shall prepare, for consideration by the Secretary, a proposed order or notice of denial. In the case of a national defense withdrawal which can only be made by an act of Congress, the authorized officer shall prepare, with the cooperation of the applicant, a draft legislative proposal to implement the applicant's withdrawal request, together with proposed recommendations for submission by the Secretary to the Congress. The findings and recommendations of the authorized officer, and the other documents previously specified in this section to be prepared by the authorized officer shall be made a part of the case file. The case file shall then be sent to the Director, Bureau of Land Management. At the same time, a copy of the findings and recommendations of the authorized officer shall be sent to the applicant.

(1) If the applicant objects to the authorized officer's findings and recommendations to the Secretary, the applicant may, within 30 days of the receipt by the applicant of notification thereof, state its objections in writing and request the Director to review the authorized officer's findings and recommendations. The applicant shall be advised of the Director's decision within 30 days of receipt of the applicant's statement of objections in the Bureau of Land Management's Washington office. The applicant's statement of objections and the Director's decision shall be made a part of the case file and thereafter the case file shall be submitted to the Secretary.

(2) If the applicant disagrees with the decision of the Director, Bureau of Land Management, the applicant may,

within 30 days of receipt by the applicant of the Director's decision, submit to the Secretary a statement of reasons for disagreement. The statement shall be considered by the Secretary together with the findings and recommendations of the authorized officer, the applicant's statement of objections, the decision of the Director, the balance of the case file and such additional information as the Secretary may request.

§ 2310.3-3 Action by the Secretary—public land orders and notices of denial.

(a) Except for national defense withdrawals which can only be made by an act of Congress, and except as may be otherwise provided in section 1(d) of Executive Order 10355 (17 FR 4833), for applications that are subject to that order, the allowance or denial, in whole or in part, of a withdrawal, modification or extension application, may only be made by the Secretary.

(b)(1) Before the allowance of an application, in whole or in part, the Secretary shall first approve all applicable memoranda of understanding and the applicant shall make all certifications required in this part. When an application has been finally allowed, in whole or in part, by the Secretary, an order to that effect shall be published promptly in the FEDERAL REGISTER. Each order shall be designated as, and shall be signed by the Secretary and issued in the form of, a "public land order." Water shall be reserved pursuant to Federal law for use in carrying out the purposes of the withdrawal only if specifically so stated in the relevant public land order. In appropriate cases, the public land order also shall refer to the memorandum of understanding discussed in § 2310.3-2(c) of this title and shall be drawn to comply with § 2310.3-6 of this title.

(2) On the same day an order withdrawing 5,000 or more acres in the aggregate is signed, the Secretary shall advise, in writing, each House of the Congress, or in the case of an emergency withdrawal, the appropriate Committee of each House, of the withdrawal action taken. Pursuant to the Secretary's authority under the act, the notices that are sent to the Congress shall be accompanied by the information required by section 204(c)(2) of the act (43 U.S.C. 1714(c)(2)), except in the case of an emergency withdrawal, transmittal of the required information may be delayed as provided in § 2310.5(c) of this title.

(c) When the action sought in an application involves the exercise by the Secretary of authority delegated by Executive Order 10355 (17 FR 4831) and the Secretary denies the application in whole or in part, the applicant shall be notified of the reasons for the Secretary's decision. The decision shall be subject to further consideration only if the applicant informs the Secretary, in writing, within 15 days of the receipt by the applicant of the Secretary's decision, that the applicant has submitted the matter to the Office of Management and Budget for consideration and adjustment, as provided for in section 1(d) of the Executive Order.

(d) A withdrawal application shall be denied, if, in the opinion of the Secretary, the applicant is attempting to circumvent the Congressional review provisions of section 204(c)(1) of the act (43 U.S.C. 1714(c)(1)) concerning withdrawals of 5,000 or more acres in the aggregate.

(e) When an application is denied in its entirety by the Secretary, a notice to that effect, signed by the Secretary, shall be published promptly in the FEDERAL REGISTER.

(f) In the case of a national defense withdrawal that may only be made by an act of Congress, the Secretary shall transmit to the Congress proposed legislation effecting the withdrawal requested, together with the recommendations of the Secretary which may or may not support the proposed legislation in whole or in part. The proposed legislation shall contain such provisions for continued operation of the public land laws as to the public land areas included in the requested withdrawal as shall be determined by the Secretary to be compatible with the intended military use.

§ 2310.3-4 Duration of withdrawals.

(a) An order initially withdrawing 5,000 or more acres of land in the aggregate, on the basis of the Secretary's authority under section 204 of the act (43 U.S.C. 1714), may be made for a period not to exceed 20 years from the date the order is signed, except that withdrawals exceeding 5,000 acres in the State of Alaska shall not become effective until notice is provided in the FEDERAL REGISTER and to both Houses of Congress. All orders withdrawing 5,000 or more acres in the aggregate shall be subject to the Congressional review provision of section 204(c) of the act (43 U.S.C. 1714(c)), except as follows:

(1) A National Wildlife Refuge System withdrawal may not be terminated as provided in section 204(c)(1) of the act (43 U.S.C 1714(c)(1)) other than by an act of Congress; or

(2) A withdrawal exceeding 5,000 acres in the State of Alaska shall terminate unless Congress passes a Joint Resolution of approval within 1 year after the notice of such withdrawal has been submitted to the Congress.

(b) An order initially withdrawing less than 5,000 acres of land, in the aggregate, on the basis of the Secretary's authority under section 204 of the act (43 U.S.C. 1714), may be made:

(1) For such time as the Secretary determines desirable for a resource use;

(2) For not more than 20 years for any other use, including, but not limited to, the use of lands for non-resource uses, related administrative sites and facilities or for other proprietary purposes; or

(3) For not more than 5 years to preserve the lands for a specific use then under consideration by either House of Congress.

(c) An order withdrawing lands on the basis of an emergency as provided for in section 204(e) of the act (43 U.S.C. 1714(e)) may be made for not more than 3 years.

(d) Except for emergency withdrawals, withdrawals of specific duration may be extended, as provided for in § 2310.4 of this title.

§ 2310.3-5 Compensation for improvements.

(a) When an application is allowed, the applicant shall compensate the holder of record of each permit, license or lease lawfully terminated or revoked after the allowance of an application, for all authorized improvements placed on the lands under the terms and conditions of the permit, license or lease, before the lands were segregated or withdrawn. The amount of such compensation shall be determined by an appraisal as of the date of revocation or termination of the permit, license or lease, but shall not exceed fair market value. To the extent such improvements were constructed with Federal funds, they shall not be compensable unless the United States has been reimbursed for such funds prior to the allowance of the application and then only to the extent of the sum that the United States has received.

(b) When an application is allowed that affects public lands which are subject to permits or leases for the grazing of domestic livestock and that is required to be terminated, the applicant shall comply with the cancellation notice and compensation requirements of section 402(g) of the act (43 U.S.C. 1752(g)), to the extent applicable.

§ 2310.3-6 Transfer of jurisdiction.

A public land order that reserves lands for a department, agency or office, shall specify the extent to which jurisdiction over the lands and their related resource uses will be exercised by that department, agency or office. (See § 2310.3-2(c) of this title).

§ 2310.4 Review and extensions of withdrawals.

(a) Discretionary withdrawals of specific duration, whether made prior to or after October 21, 1976, shall be reviewed by the Secretary commencing at least 2 years before the expiration date of the withdrawal. When requested, the department, agency or office benefitting from the withdrawal shall promptly provide the Secretary with the information required by § 2310.1-2(c) of this title, and the information required by § 2310.3-2(b) of this title, in the form of a withdrawal extension application with supplemental information. If the concerned department, agency or office is delinquent in responding to such request, the deliquency shall constitute a ground for not extending the withdrawal. Such withdrawals may be extended or further extended only upon compliance with these regulations, and only if the Secretary determines that the purpose for which the withdrawal was first made requires the extension, and then only for a period that shall not exceed the duration of the original withdrawal period. In allowing an extension, the Secretary shall comply with the provisions of section 204(c) of the act (43 U.S.C. 1714(c)), or section 204(d) of the act (43 U.S.C. 1714(d)), whichever is applicable; and, whether or not an extension is allowed, the Secretary shall report promptly on the decision for each pending extension to the Congressional Committees that are specified in section 204(f) of the act (43 U.S.C. 1714(f).

(b) Notwithstanding the provisions of this section, if the Secretary determines that a National Wildlife Refuge System withdrawal of specific duration shall not be extended, the Secretary shall nevertheless extend or reextend the withdrawal until such time as the withdrawal is terminated by an act of Congress.

§ 2310.5 Special action on emergency withdrawals.

(a) When the Secretary determines, or when either one of the two Committees of the Congress that are specified in section 204(e) of the act (43 U.S.C. 1714(e)) notifies the Secretary, that an emergency exists and that extraordinary measures need to be taken to protect natural resources or resource values that otherwise would be lost, the Secretary shall immediately make a withdrawal which shall be limited in its scope and duration to the emergency. An emergency withdrawal shall be effective when signed, shall not exceed 3 years in duration and may not be extended by the Secretary. If it is determined that the lands involved in an emergency withdrawal should continue to be withdrawn, a withdrawal application should be submitted to the Bureau of Land Management in keeping with the normal procedures for processing a withdrawal as provided for in this subpart. Such applications will be subject to the provisions of section 204(c) of the act (43 U.S.C. 1714(c)), or section 204(d) of the act (43 U.S.C. 1714(d), whichever is applicable, as well as section 204(b)(1) of the act (43 U.S.C. 1714(b)(1)).

(b) When an emergency withdrawal is signed, the Secretary shall on the same day, send a notice of the withdrawal to the two Committees of the Congress that are specified for that purpose in section 204(e) of the act (43 U.S.C. 1714(e)).

(c) The Secretary shall forward a report to each of the aforementioned committees within 90 days after filing with them the notice of emergency withdrawal. Reports for all such withdrawals, regardless of the amount of acreage withdrawn, shall contain the information specified in section 204(c)(2) of the act (43 U.S.C. 1714(c)(2)).

Subpart 2320—Federal Energy Regulatory Commission Withdrawals

§ 2320.0-3 Authority.

(a) Section 24 of the Federal Power Act of June 10, 1920, as amended (16 U.S.C. 818), provides that any lands of the United States included in an application for power development under that Act shall, from the date of filing of an application therefor, be reserved from entry, location or other disposal under the laws of the United States until otherwise directed by the Federal Energy Regulatory Commission or by Congress. This statute also provides that whenever the Commission shall determine that the value of any lands of the United States withdrawn or classified for power purposes shall not be injured or destroyed for such purposes by location, entry or selection under the public land laws, the Secretary of the Interior shall declare such lands open to location, entry or selection for such purposes under such restrictions as the Commission may determine are necessary, and subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy and use any and all of the lands for power purposes. Before any lands are declared open to location, entry or selection, the Secretary shall give notice of his intention to make this declaration to the Governor of the State within which such lands are located, and the State shall have a preference for a period of 90 days from the date of this notice to file under any applicable law or regulation an application of the State, or any political subdivision thereof, for any lands required as a right-of-way for a public highway or as a source of materials for the construction and maintenance of such highways. The 90-day preference does not apply to lands which remain withdrawn for national forest or other purposes.

(b) The Mining Claims Rights Restoration Act of 1955 (30 U.S.C. 621 et seq.), opened public lands which were then, or thereafter, withdrawn or classified for power purposes, with specified exceptions, to mineral location and development under certain circumstances.

§ 2320.1 Lands considered withdrawn or classified for power purposes.

The following classes of lands of the United States are considered as withdrawn or classified for the purposes of section 24 of the Federal Power Act (16 U.S.C. 818): Lands withdrawn for powersite reserves under sections 1 and 2 of the Act of June 25, 1910, as amended (43 U.S.C. 141-148); lands included in an application for power development under the Federal Power Act (16 U.S.C. 818); lands classified for powersite purposes under the Act of March 3, 1879 (43 U.S.C. 31); lands designated as valuable for power purposes under the Act of June 25, 1910, as amended (43 U.S.C. 148); the Act of June 9, 1916 (39 Stat. 218, 219), and the Act of February 26, 1919 (40 Stat. 1178, 1180); lands within final hydroelectric power permits under the Act of February 15, 1901 (43 U.S.C. 959); and lands within transmission line permits or approved rights-of-way under the aforementioned Act of February 15, 1901, or the Act of March 4, 1911 (43 U.S.C. 961).

§ 2320.2 General determinations under the Federal Power Act.

(a) On April 22, 1922, the Federal Power Commission (as predecessor to the Federal Energy Regulatory Commission) made a general determination "that where lands of the United States have heretofore been or hereafter may be reserved or classified as powersites, such reservation or classification being made solely because such lands are either occupied by power transmission lines or their occupancy and use for such purposes have been applied for or authorized under appropriate laws of the United States, and such lands have otherwise no value for power purposes, and are not occupied in trespass, the Commission determines that the value of such lands so reserved or classified or so applied for or authorized, shall not be injured or destroyed for the purposes of power development by location, entry or selection under the public land laws, subject to the reservation of section 24 of the Federal Power Act."

(b) The regulations governing mining locations on lands withdrawn or classified for power purposes, including lands that have been restored and opened to mining locations under section 24 of the Federal Power Act, are contained in Subpart 3730 and in Group 3800 of this title.

§ 2320.3 Applications for restoration.

(a) Other than with respect to national forest lands, applications for restoration and opening of lands withdrawn or classified for power purposes under the provisions of section 24 of the Federal Power Act shall be filed, in duplicate, in the proper office of the Bureau of Land Management as set forth in § 2321.2-1 of this title. No particular form of application is required, but it shall be typewritten or in legible handwriting, and it shall contain the information required by 18 CFR 25.1. Each application shall be accompanied by a service charge of $10 which is not returnable.

(b) Favorable action upon an application for restoration shall not give the applicant any preference right when the lands are opened.

PART 2360—NATIONAL PETROLEUM RESERVE IN ALASKA

Subpart 2361—Management and Protection of the National Petroleum Reserve in Alaska

Sec.
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Subpart 2361—Management and Protection of the National Petroleum Reserve in Alaska

SOURCE: 42 FR 28721, June 3, 1977, unless otherwise noted.

§ 2361.0-1 Purpose.

The purpose of the regulations in this subpart is to provide procedures for the protection and control of environmental, fish and wildlife, and historical or scenic values in the National Petroleum Reserve in Alaska pursuant to the provisions of the Naval Petroleum Reserves Production Act of 1976. (90 Stat. 303; 42 U.S.C. 6501 et seq.).

§ 2361.0-2 Objectives.

The objective of this subpart is to provide for the protection of the environmental, fish and wildlife, and historical or scenic values of the Reserve so that activities which are or might be detrimental to such values will be carefully controlled to the extent consistent with the requirements of the Act for petroleum exploration of the reserve.

§ 2361.0-3 Authority.

The Naval Petroleum Reserve Production Act of 1976 (90 Stat. 303, 42 U.S.C. 6501, et seq.) is the statutory authority for these regulations.

§ 2361.0-4 Responsibility.

(a) The Bureau of Land Management (BLM) is responsible for the surface management of the reserve and protection of the surface values from environmental degradation, and to prepare rules and regulations necessary to carry out surface management and protection duties.

(b) The U.S. Geological Survey is responsible for management of the continuing exploration program during the interim between the transfer of jurisdiction from the U.S. Navy to the U.S. Department of the Interior and the effective date of any legislation for a permanent development and production program to enforce regulations and stipulations which relate to the exploration of petroleum resources of the Reserve, and to operate the South Barrow gas field or such other fields as may be necessary to supply gas at reasonable and equitable rates to the Native village of Barrow and other communities and installations at or near Point Barrow, Alaska, and to installations of the Department of Defense and other agencies of the U.S. located at or near Point Barrow, Alaska.

§ 2361.0-5 Definitions.

As used in this subpart, the following terms shall have the following meanings:

(a) "Act" means the Naval Petroleum Reserves Production Act of 1976, (90 Stat. 303, 42 U.S.C. 6501, et seq.).

(b) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties of this subpart.

(c) "Exploration" means activities conducted on the Reserve for the purpose of evaluating petroleum resources which include crude oil, gases of all kinds (natural gas, hydrogen, carbon dioxide, helium, and any others), natural gasoline, and related hydrocarbons (tar sands, asphalt, propane butane, etc.), oil shale and the products of such resources.

(d) "Reserve" means those lands within the National Petroleum Reserve in Alaska (prior to June 1, 1977, designated Naval Petroleum Reserve No. 4) which was established by Executive Order of the President, dated February 27, 1923, except for tract Numbered 1 as described in Public Land Order 2344 (the Naval Arctic Research Laboratory—surface estate only) dated April 24, 1961.

(e) "Secretary" means the Secretary of the Interior.

(f) "Special areas" means areas within the reserve identified by the Secretary of the Interior as having significant subsistence, recreational, fish and wildlife, or historical or scenic value and, therefore, warranting maximum protection of such values to the extent consistent with the requirements of the Act for the exploration of the Reserve.

(g) "Use authorization" means a written approval of a request for use of land or resources.

§ 2361.0-6 [Reserved]

§ 2361.0-7 Effect of Law.

(a) Subject to valid existing rights, all lands within the exterior boundaries of the Reserve are reserved and withdrawn from all forms of entry and disposition under the public land laws, including the mining and mineral leasing laws, and all other Acts.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Secretary is authorized to:

(1) Make dispositions of mineral materials pursuant to the Act of July 31, 1947 (61 Stat. 681), as amended (30 U.S.C. 601), for appropriate use by Alaska Natives.

(2) Make such dispositions of mineral materials and grant such rights-of-way, licenses, and permits as may be necessary to carry out his responsibilities under the Act.

(3) Convey the surface of lands properly selected on or before December 18, 1975, by Native village corporations pursuant to the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

(c) All other provisions of law heretofore enacted and actions heretofore taken reserving such lands as a Reserve shall remain in full force and effect to the extent not inconsistent with the Act.

(d) To the extent not inconsistent with the Act, all other public land laws are applicable.

§ 2361.1 Protection of the Environment.

(a) The authorized officer shall take such action, including monitoring, as he deems necessary to mitigate or avoid unnecessary surface damage and to minimize ecological disturbance throughout the reserve to the extent consistent with the requirements of the Act for the exploration of the reserve.

(b) The Cooperative Procedures of January 18, 1977, for National Petroleum Reserve in Alaska between the Bureau of Land Management (BLM) and the U.S. Geological Survey (GS) (42 FR 4542, January 25, 1977) provides the procedures for the mutual cooperation and interface of authority and responsibility between GS and BLM concerning petroleum exploration activities (i.e., geophysical and drilling operations), the protection of the environment during such activities in the Reserve, and other related activities.

(c) Maximum protection measures shall be taken on all actions within the Utikok River Uplands, Colville River, and Teshekpuk Lake special areas, and any other special areas identified by the Secretary as having significant subsistence, recreational, fish and wildlife, or historical or scenic value. The boundaries of these areas and any other special areas identified by the Secretary shall be identified on maps and be available for public inspection in the Fairbanks District Office. In addition, the legal description of the three special areas designated herein and any new areas identified hereafter will be published in the FEDERAL REGISTER and appropriate local newspapers. Maximum protection may include, but is not limited to, requirements for:

(1) Rescheduling activities and use of alternative routes, (2) types of vehicles and loadings, (3) limiting types of aircraft in combination with minimum flight altitudes and distances from identified places, and (4) special fuel handling procedures.

(d) Recommendations for additional special areas may be submitted at any time to the authorized officer. Each recommendation shall contain a description of the values which make the area special, the size and location of the area on appropriate USGS quadrangle maps, and any other pertinent information. The authorized officer shall seek comments on the recommendation(s) from interested public agencies, groups, and persons. These comments shall be submitted along with his recommendation to the Secretary. Pursuant to section 104(b) of the Act, the Secretary may designate that area(s) which he determines to have special values requiring maximum protection. Any such designated area shall be identified in accordance with the provision of § 2361.1(c) of this subpart.

(e) (1) To the extent consistent with the requirements of the Act and after consultation with appropriate Federal, State, and local agencies and Native organizations, the authorized officer may limit, restrict, or prohibit use of and access to lands within the Reserve, including special areas. On proper notice as determined by the authorized officer, such actions may be taken to protect fish and wildlife breeding, nesting, spawning, lambing of calving activity, major migrations of fish and wildlife, and other environmental, scenic, or historic values.

(2) The consultation requirement in § 2361.1(e)(1) of this subpart is not required when the authorized officer determines tnat emergency measures are required.

(f) No site, structure, object, or other values of historical archaelogical, cultural, or paleontological character, including but not limited to historic and prehistoric remains, fossils, and artifacts, shall be injured, altered, destroyed, or collected without a current Federal Antiquities permit.

§ 2361.2 Use Authorizations.

(a) Except for petroleum exploration which has been authorized by the Act, use authorizations must be obtained from the authorized officer prior to any use within the Reserve. Only those uses which are consistent with the purposes and objectives of the Act will be authorized.

(b) Except as may be limited, restricted, or prohibited by the authorized officer pursuant to § 2361.1 of this subpart or otherwise, use authorizations are not required for (1) subsistence uses (e.g., hunting, fishing, and berry picking) and (2) recreational uses (e.g., hunting, fishing, backpacking, and wildlife observation).

(c) Applications for use authorizations shall be filed in accordance with applicable regulations in this chapter. In the absence of such regulation, the authorized officer may make such dispositions absence of such regulations, the author-of mineral materials and grant such rights-of-way, licenses, and permits as may be necessary to carry out his responsibilities under the Act.

(d) In addition to other statutory or regulatory requirements, approval of applications for use authorizations shall be subject to such terms and conditions which the authorized officer determines to be necessary to protect the environmental, fish and wildlife, and historical or scenic values of the Reserve.

§ 2361.3 Unauthorized use and occupancy.

Any person who violates or fails to comply with regulations of this subpart is subject to prosecution, including trespass and liability for damages, pursuant to the appropriate laws.

PART 2370—RESTORATIONS AND REVOCATIONS

Subpart 2370—Restorations and Revocations; General

Sec.
2370.0-1 Purpose.
2370.0-3 Authority.

Subpart 2372—Procedures

2372.1 Notice of intention to relinquish action by holding agency.
2372.2 Report to General Services Administration.
2372.3 Return of lands to the public domain; conditions.

Subpart 2374—Acceptance of Jurisdiction by BLM

2374.1 Property determinations.
2374.2 Conditions of acceptance by BLM.

Subpart 2370—Restorations and Revocations; General

AUTHORITY: 63 Stat. 377 as amended, R.S. 2478; 40 U.S.C. 472, 43 U.S.C. 1201.

§ 2370.0-1 Purpose.

The regulations of this Part 2370 apply to lands and interests in lands withdrawn or reserved from the public domain, except lands reserved or dedicated for national forest or national park purposes, which are no longer needed by the agency for which the lands are withdrawn or reserved.

[35 FR 9558, June 13, 1970]

§ 2370.0-3 Authority.

The Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, governs the disposal of surplus Federal lands or interests in lands. Section 3 of that act (40 U.S.C. 472), as amended, February 28, 1958 (72 Stat. 29), excepts from its provisions the following:

(a) The public domain.

(b) Lands reserved or dedicated for national forest or national park purposes.

(c) Minerals in lands or portions of lands withdrawn or reserved from the public domain which the Secretary of the Interior determines are suitable for disposition under the public land mining and mineral leasing laws.

(d) Lands withdrawn or reserved from the public domain, but not including lands or portions of lands so withdrawn or reserved which the Secretary of the Interior, with the concurrence of the Administrator of the General Services Administration, determines are not suitable for return to the public domain for disposition under the general public-land laws, because such lands are substantially changed in character by improvements or otherwise.

[35 FR 9558, June 13, 1970]

Subpart 2372—Procedures

SOURCE: 35 FR 9558, June 13, 1970, unless otherwise noted.

§ 2372.1 Notice of intention to relinquish action by holding agency.

(a) Agencies holding withdrawn or reserved lands which they no longer need will file, in duplicate, a notice of intention to relinquish such lands in the proper office (see § 1821.2-1 of this chapter).

(b) No specific form of notice is required, but all notices must contain the following information:

(1) Name and address of the holding agency.

(2) Citation of the order which withdrew or reserved the lands for the holding agency.

(3) Legal description and acreage of the lands, except where reference to the order of withdrawal or reservation is sufficient to identify them.

(4) Description of the improvements existing on the lands.

(5) The extent to which the lands are contaminated and the nature of the contamination.

(6) The extent to which the lands have been decontaminated or the measures taken to protect the public from the contamination and the proposals of the holding agency to maintain protective measures.

(7) The extent to which the lands have been changed in character other than by construction of improvements.

(8) The extent to which the lands or resources thereon have been disturbed and the measures taken or proposed to be taken to recondition the property.

(9) If improvements on the lands have been abandoned, a certification that the holding agency has exhausted General Services Administration procedures for their disposal and that the improvements are without value.

(10) A description of the easements or other rights and privileges which the holding agency or its predecessors have granted covering the lands.

(11) A list of the terms and conditions, if any, which the holding agency deems necessary to be incorporated in any further disposition of the lands in order to protect the public interest.

(12) Any information relating to the interest of other agencies or individuals in acquiring use of or title to the property or any portion of it.

(13) Recommendations as to the further disposition of the lands, including where appropriate, disposition by the General Services Administration.

§ 2372.2 Report to General Services Administration.

The holding agency will send one copy of its report on unneeded lands to the appropriate regional office of the General Services Administration for its information.

§ 2372.3 Return of lands to the public domain: conditions.

(a) When the authorized officer of the Bureau of Land Management determines the holding agency has complied with the regulations of this part, including the conditions specified in § 2374.2 of this subpart, and that the lands or interests in lands are suitable for return to the public domain for disposition under the general public land laws, he will notify the holding agency that the Department of the Interior accepts accountability and responsibility for the property, sending a copy of this notice to the appropriate regional office of the General Services Administration.

Subpart 2374—Acceptance of Jurisdiction by BLM

§ 2374.1 Property determinations.

(a) When the authorized officer of the Bureau of Land Management determines that the holding agency has complied with the regulations of this part and that the lands or interests in lands other than minerals are not suitable for return to the public domain for disposition under the general public land laws, because the lands are substantially changed in character by improvements or otherwise, he will request the appropriate officer of the General Services Administration, or its delegate, to concur in his determination.

(b) When the authorized officer of the Bureau of Land Management determines that minerals in lands subject to the provisions of paragraph (a) of this section are not suitable for disposition under the public land mining or mineral leasing laws, he will notify the appropriate officer of the General Services Administration or its delegate of this determination.

(c) Upon receipt of the concurrence specified in paragraph (a) of this section, the authorized officer of the Bureau of Land Management will notify the holding agency to report as excess property the lands and improvements therein, or interests in lands to the General Services Administration pursuant to the regulations of that Administration. The authorized officer of the Bureau of Land Management will request the holding agency to include minerals in its report to the General Services Administration only when the provisions of paragraph (b) of this section apply. He will also submit to the holding agency, for transmittal with its report to the General Services Administration, information of record in the Bureau of Land Management on the claims, if any, by agencies other than the holding agency of primary, joint, or secondary jurisdiction over the lands and on any encumbrances under the public land laws.

[35 FR 9559, June 13, 1970]

§ 2374.2 Conditions of acceptance by BLM.

Agencies will not be discharged of their accountability and responsibility under this section unless and until:

(a) The lands have been decontaminated of all dangerous materials and have been restored to suitable condition or, if it is uneconomical to decontaminate or restore them, the holding agency posts them and installs protective devices and agrees to maintain the notices and devices.

(b) To the extent deemed necessary by the authorized officer of the Bureau of Land Management, the holding agency has undertaken or agrees to undertake or to have undertaken appropriate land treatment measures correcting, arresting, or preventing deterioration of the land and resources thereof which has resulted or may result from the agency's use or possession of the lands.

(c) The holding agency, in respect to improvements which are of no value, has exhausted General Services Administration's procedures for their disposal and certifies that they are of no value.

(d) The holding agency has resolved, through a final grant or denial, all commitments to third parties relative to rights and privileges in and to the lands or interests therein.

(e) The holding agency has submitted to the appropriate office mentioned in paragraph (a) of § 2372.1 a copy of, or the case file on, easements, leases, or other encumbrances with which the holding agency or its predecessors have burdened the lands or interests therein.

[35 FR 9559, June 13, 1970]

Group 2400—Land Classification

PART 2400—LAND CLASSIFICATION

Subpart 2400—Land Classification; General

Sec.
2400.0-2 Objectives.
2400.0-3 Authority.
2400.0-4 Responsibility.
2400.0-5 Definitions.

SOURCE: 35 FR 9559, June 13, 1970, unless otherwise noted.

Subpart 2400—Land Classification; General

§ 2400.0-2 Objectives.

The statutes cited in § 2400.0-3 authorize the Secretary of the Interior to classify or otherwise take appropriate steps looking to the disposition of public lands, and on an interim basis, to classify public lands for retention and management, subject to requirements of the applicable statutes. In addition to any requirements of law, it is the policy of the Secretary (a) to specify those criteria which will be considered in the exercise of his authority and (b) to establish procedures which will permit the prompt and efficient exercise of his authority with, as far as is practicable, the knowledge and participation of the interested parties, including the general public. Nothing in these regulations is meant to affect applicable State laws governing the appropriation and use of water, regulation of hunting and fishing or exercise of any police power of the State.

§ 2400.0-3 Authority.

(a) All vacant public lands, except those in Alaska, have been, with certain exceptions, withdrawn from entry, selection, and location under the nonmineral land laws by Executive Order 6910, of November 26, 1934, and Executive Order 6964 of February 5, 1935, and amendments thereto, and by the establishment of grazing districts under section 1 of the Act of June 28, 1934 (48 Stat. 1269), as amended (43 U.S.C. 315). Section 7 of the Act of June 28, 1934 (48 Stat. 1272), as amended (43 U.S.C. 315f), authorizes the Secretary of the Interior in his discretion to examine and classify and open to entry, selection, or location under applicable law any lands withdrawn or reserved by Executive Order 6910 of November 26, 1934, or Executive Order 6964 of February 5, 1935, and amendments thereto, or within a grazing district established under that act which he finds are more valuable or suitable for the production of agricultural crops than for the production of native grasses and forage plants, or more valuable or suitable for any other use than for the use provided for under said act, or proper for acquisition in satisfaction of any outstanding lieu, exchange, or scrip rights or land grant. Classification under section 7 is a prerequisite to the approval of all entries, selections, or locations under the following subparts of this chapter, except as they apply to Alaska and with certain other exceptions: Original, Additional, Second, and Adjoining Farm Homesteads—Subparts 2511, 2512, and 2513; Enlarged Homestead—Subpart 2514; Indian Allotments—Part 2530; Desert Land Entries—Part 2520; Recreation and Public Purposes Act—Part 2740 and Subpart 2912; State Grants for Educational, Institutional, and Park Purposes—Part 2620; Scrip Selections—Part 2610 and Exchanges for the Consolidation or Extension of National Forests, Indian Reservations or Indian Holdings—Group 2200.

(b) Section 8(b) of the Act of June 28, 1934 (48 Stat. 1272), as amended

(43 U.S.C. 315g), authorizes the Secretary of the Interior, when public interests will be benefited thereby, to accept on behalf of the United States title to any privately owned lands within or without the boundaries of a grazing district established under that act and in exchange therefor to issue patent for not to exceed an equal value of surveyed grazing district land or of unreserved surveyed public land in the same State or within a distance of not more than 50 miles within the adjoining State nearest the base lands. The regulations governing such exchanges are contained in Group 2200 of this chapter.

(c) Section 2455 of the Revised Statutes, as amended (43 U.S.C. 1171), authorizes the Secretary of the Interior in his discretion to order into market and sell at public auction isolated or disconnected tracts of public land not exceeding 1,520 acres, and tracts not exceeding 760 acres the greater part of which are mountainous or too rough for cultivation. The regulations governing such sales are contained in Part 2710 of this chapter.

(d) Section 3 of the Act of August 28, 1937 (50 Stat. 875, 43 U.S.C. 1181c), authorizes the Secretary of the Interior to classify, either on application or otherwise, and restore to homestead entry, or purchase under the provisions of section 2455 of the Revised Statutes, as amended, any of the revested Oregon and California Railroad or reconveyed Coos Bay Wagon Road grant land which, in his judgment, is more suitable for agricultural use than for afforestation, reforestation, stream-flow protection, recreation, or other public purposes. The regulations governing disposal under this act are contained in Part 2710 of this chapter.

(e) The Small Tract Act of June 1, 1938 (52 Stat. 609), as amended (43 U.S.C. 682a-e), authorizes the Secretary of the Interior, in his discretion, to lease or sell certain classes of public lands which he classifies as chiefly valuable for residence, recreation, business or community site purposes. The regulations governing leases and sales under this act are contained in Part 2730 and Subpart 2913 of this chapter.

(f) The Recreation and Public Purposes Act of June 14, 1926 (44 Stat. 741), as amended (43 U.S.C. 869-869-4), requires the Secretary of the Interior, in the exercise of his discretion to make a determination that land is to be used for an established or definitely proposed project, and in the case of Alaska authorizes him to classify certain classes of public lands for lease or sale for recreation or other public purposes. The regulations governing lease and sale of land under this act are contained in Part 2740 and Subpart 2912 of this chapter.

(g) The Act of July 31, 1939 (53 Stat. 1144), authorizes and empowers the Secretary of the Interior, in the administration of the Act of August 28, 1937 (supra), in his discretion, to exchange any land formerly granted to the Oregon & California Railroad Co., title to which was revested in the United States pursuant to the provisions of the Act of June 9, 1916 (39 Stat. 218), and any land granted to the State of Oregon, title to which was reconveyed to the United States by the Southern Oregon Co. pursuant to the provisions of the Act of February 26, 1919 (40 Stat. 1179), for lands of approximately equal aggregate value held in private, State, or county ownership, either within or contiguous to the former limits of such grants, when by such action the Secretary of the Interior will be enabled to consolidate advantageously the holdings of lands of the United States. The regulations governing exchanges under this act are contained in Part 2260 of this chapter.

(h) The Alaska Public Sales Act of August 30, 1949 (63 Stat. 679), as amended (48 U.S.C. 364a-f), authorizes the Secretary of the Interior in his discretion to classify certain classes of public lands in Alaska for public sale for industrial or commercial purposes. The regulations governing sales of land under this act are contained in Part 2770 of this chapter.

(i) The Public Land Sale Act of September 19, 1964 (78 Stat. 988, 43 U.S.C. 1421-27), authorizes and directs the Secretary of the Interior to sell public lands in tracts not exceeding 5,120 acres, that have been classified for sale in accordance with a determination that (1) the lands are required for the orderly growth and development of a community or (2) the lands are chiefly valuable for residential, commercial, agricultural (which does not include lands chiefly valuable for grazing or raising forage crops), industrial, or public uses or development. The regulations governing such sales are contained in Part 2720 of this chapter.

(j) The Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986, 43 U.S.C. 1411-18), authorizes the Secretary of the Interior to determine which of the public lands (and other Federal lands), including those situated in the State of Alaska exclusively administered by him through the Bureau of Land Management shall be (1) sold because they are (i) required for the orderly growth and development of a community or (ii) are chiefly valuable for residential, commercial, agricultural (which does not include lands chiefly valuable for grazing or raising forage crops), industrial, or public uses or development or (2) retained, at least for the time being, in Federal ownership and managed for (i) domestic livestock grazing, (ii) fish and wildlife development and utilization, (iii) industrial development, (iv) mineral production, (v) occupancy, (vi) outdoor recreation, (vii) timber production, (viii) watershed protection, (ix) wilderness preservation, or (x) preservation of public values that would be lost if the land passed from Federal ownership.

§ 2400.0-4 Responsibility.

(a) Except where specified to the contrary in this group, the authority of the Secretary of the Interior to classify lands and make other determinations in accordance with the regulations of this part has been delegated to persons authorized to act in his name; to the Director, Bureau of Land Management and persons authorized to act in his name; to State Directors of the Bureau of Land Management and to any person authorized to act in the name of a State Director.

(b) Classifications and other determinations in accordance with the regulations of this group may be made by the authorized officer whether or not applications or petitions have been filed for the lands.

§ 2400.0-5 Definitions.

As used in the regulations of this group—

(a) "Residential" refers to single or multi-family dwellings or combinations thereof, and related community facilities, both seasonal and year-round.

(b) "Commercial" refers to the sale, exchange, or distribution of goods and services.

(c) "Industrial" refers to the manufacture, processing, and testing of goods and materials, including the production of power. It does not refer to the growing of agricultural crops, or the raising of livestock, or the extraction or severance of raw materials from the land being classified, but it does include activities incidental thereto.

(d) "Agricultural" refers to the growing of cultivated crops.

(e) "Community" refers to a village, town or city, or similar subdivision of a State, whether or not incorporated.

(f) "Domestic livestock" refers to cattle, horses, sheep, goats and other grazing animals owned by livestock operators, provided such operators meet the qualification set forth in § 4111.1-1 or § 4131.1-3 of this chapter. This definition includes animals raised for commercial purposes and also "domestic livestock" within the meaning of § 4111.3-1(d)(1) of this chapter.

(g) "Fish and wildlife" refers to game, fish and other wild animals native or adaptable to the public lands and waters.

(h) "Mineral" refers to any substance that (1) is recognized as mineral, according to its chemical composition, by the standard authorities on the subject, or (2) is classified as mineral product in trade or commerce, or (3) possesses economic value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts.

(i) "Occupancy" refers to use of lands as a site for any type of useful structure whatsoever.

(j) "Outdoor recreation" includes, but is not limited to, hunting, fishing, trapping, photography, horseback riding, picnicking, hiking, camping, swimming, boating, rock and mineral collecting, sightseeing, mountain climbing, and skiing.

(k) "Timber production" refers to the growth of trees in forests and woodlands.

(l) "Watershed protection" refers to maintenance of the stability of soil and soil cover and the control of the natural flow of water.

(m) "Wilderness" refers to areas in a native condition or reverted to a native condition, substantially free of man-made structures and human habitation.

(n) "Public value" refers to an asset held by, or a service performed for, or a benefit accruing to the people at large.

(o) "Multiple use" means the management of the various surface and subsurface resources so that they are utilized in the combination that will best meet the present and future needs of the American people; the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

(p) "Sustained yield of the several products and services" means the achievement and maintenance of a high-level annual or regular periodic output of the various renewable resources of land without impairment of the productivity of the land.

PART 2410—CRITERIA FOR ALL LAND CLASSIFICATIONS

Subpart 2410—General Criteria

Sec.
2410.1 All Classifications.
2410.2 Relative value, disposal or retention.

§ 2410.1 All Classifications.

All classifications under the regulations of this part will give due consideration to ecology, priorities of use, and the relative values of the various resources in particular areas. They must be consistent with all the following criteria:

(a) The lands must be physically suitable or adaptable to the uses or purposes for which they are classified. In addition, they must have such physical and other characteristics as the law may require them to have to qualify for a particular classification.

(b) All present and potential uses and users of the lands will be taken into consideration. All other things being equal, land classifications will attempt to achieve maximum future uses and minimum disturbance to or dislocation of existing users.

(c) All land classifications must be consistent with State and local government programs, plans, zoning, and regulations applicable to the area in which the lands to be classified are located, to the extent such State and local programs, plans, zoning, and regulations are not inconsistent with Federal programs, policies, and uses, and will not lead to inequities among private individuals.

(d) All land classifications must be consistent with Federal programs and policies, to the extent that those programs and policies affect the use or disposal of the public lands.

[35 FR 9560, June 13, 1970]

§ 2410.2 Relative value, disposal or retention.

When, under the criteria of this part, a tract of land has potential for either retention for multiple use management or for some form of disposal, or for more than one form of disposal, the relative scarcity of the values involved and the availability of alternative means and sites for realization of those values will be considered. Long-term public benefits will be weighed against more immediate or local benefits. The tract will then be classified in a manner which will best promote the public interests.

[35 FR 9560, June 13, 1970]

PART 2420—MULTIPLE-USE MANAGEMENT CLASSIFICATIONS

Subpart 2420—Criteria for Multiple-Use Management Classifications

Sec.
2420.1 Use of criteria.
2420.2 Criteria.

§ 2420.1 Use of criteria.

In addition to the general criteria in Subpart 2410, the following criteria will be used to determine whether public lands will be retained, in Federal ownership and managed for domestic livestock grazing, fish and wildlife development and utilization, industrial development, mineral production, occupancy, outdoor recreation, timber production, watershed protection, wilderness preservation, or preservation of public values that would be lost if the land passed from Federal ownership.

[35 FR 9561, June 13, 1970]

§ 2420.2 Criteria.

Lands may be classified for retention under the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986, 43 U.S.C. 1411-18), if they are not suitable for disposal under the criteria set forth in Part 2430 and such classification will do one or more of the following:

(a) Assist in effective and economical administration of the public lands in furtherance of the several objectives of such administration as expressed in the various public land laws.

(b) Further the objectives of Federal natural resource legislation directed, among other things towards:

(1) Stabilization and development of the livestock industry dependent upon Federal lands, such as sections 1 and 15 of the Taylor Grazing Act (43 U.S.C. 315 and 315m), and the Alaska Grazing Act (48 U.S.C. 471-471o).

(2) Provision or preservation of adequate areas of public hunting and fishing grounds and public access thereto, and maintenance of habitat and food supplies for the fish and wildlife dependent upon the public lands and maintained under Federal and State programs, such as section 9 of the Taylor Grazing Act (43 U.S.C. 315h) and the Fish and Wildlife Coordination Act (16 U.S.C. 661-666c).

(3) Fostering the economy of the nation by industrial and mineral development, such as through the materials sales and mineral leasing laws (Group 3000 of this chapter) and the rights-of-way laws (Group 2800 of this chapter).

(4) Realization of the beneficial utilization of the public lands through occupancy leases, such as under the Recreation and Public Purposes Act (43 U.S.C. 869-869-4) and the Small Tract Act (43 U.S.C. 682a-682e).

(5) Provision of needed recreation, conservation, and scenic areas and open space (42 U.S.C. 1500-1500e) and assurance of adequate outdoor recreation resources for present and future generations of Americans (16 U.S.C. 460:1 et seq.).

(6) Stabilization of the timber industry and dependent communities and sustained-yield production of timber and other forest products, such as the Materials Sales Act (30 U.S.C. 601-604), and, in connection with management of other Federal lands, the O and C Act (43 U.S.C. 1181a-1181f, 1181g-1181j).

(7) Protection of frail lands, conservation of productive soils and water supplies, and prevention of damage and loss due to excessive runoff, flooding, salination, and siltation, such as the Soil and Moisture Conservation Act (16 U.S.C. 590a et seq.) and section 2 of the Taylor Grazing Act (43 U.S.C. 315a).

(c) Preservation of public values that would be lost if the land passed from Federal ownership (43 U.S.C. 1411-1418) such as where

(1) The lands are needed to protect or enhance established Federal programs, by such means as provision of buffer zones, control of access, maintenance of water supplies, reduction and prevention of water pollution, exclusion of nonconforming inholdings, maintenance of efficient management areas, provision of research areas, and maintenance of military areas or sites for other government activities.

(2) The lands should be retained in Federal ownership pending enactment of Federal legislation, which would affect them.

(3) The lands should be retained in Federal ownership pending their acquisition by a State or local government.

(4) The lands are best suited for multiple use management and require management for a mixture of uses in order to best benefit the general public and such management could not be achieved if the lands were in private ownership.

(5) The lands contain scientific, scenic, historic, or wilderness values which would be lost to the general public if they were transferred out of Federal ownership.

(6) Transfer of the lands would be inconsistent with national objectives for the preservation of natural beauty of the country and the proper utilization of open space.

[35 FR 9561, June 13, 1970]

PART 2430—DISPOSAL CLASSIFICATIONS

Subpart 2430—Criteria for Disposal Classifications

Sec.

2430.1 Use of criteria.
2430.2 General criteria for disposal classification.
2430.3 Additional criteria for classification of lands needed for urban or suburban purposes.
2430.4 Additional criteria for classification of lands valuable for public purposes.
2430.5 Additional criteria for classification of lands valuable for residential, commercial, agricultural, or industrial purposes.
2430.6 Additional criteria for lands valuable for other purposes.

Source: 35 FR 9561, June 13, 1970, unless otherwise noted.

Subpart 2430—Criteria for Disposal Classifications

§ 2430.1 Use of criteria.

In addition to the general criteria in Subpart 2410 the following criteria will govern classifications under the authorities listed in § 2400.0-3 for sale, selection, grant or other disposal under the Public Land Sale Act (78 Stat. 988, 43 U.S.C. 1421-27) and other laws authorizing the Secretary of the Interior to dispose of public lands. The criteria are set forth in terms of land use classes. Where appropriate, the applicability of specific disposal laws to lands in each use class is discussed.

§ 2430.2 General criteria for disposal classification.

The general approach to determine the act under which lands are to be classified and disposed of is as follows:

(a) Consideration under criteria listed in this part will first be given to whether the lands can be classified for retention for multiple use management, for disposal, or for both. If, under these criteria, they could be classified for both, the principles of § 2410.2 will be applied.

(b) If the lands are found to be suitable for disposal, consideration under the criteria of this part will be given to whether the lands are needed for urban or suburban purposes or whether they are chiefly valuable for other purposes. Lands found to be valuable for public purposes will be considered chiefly valuable for public purposes, except in situations where alternate sites are available to meet the public needs involved.

§ 2430.3 Additional criteria for classification of lands needed for urban or suburban purposes.

(a) To be needed for urban or suburban purposes it must be anticipated that a community will embrace the lands within 15 years.

(b) Lands determined to be needed for urban or suburban purposes may be classified for sale pursuant to the Public Land Sale Act as being required for the orderly growth and development of a community, if (1) adequate zoning regulations are in effect and (2) adequate local governmental comprehensive plans have been adopted.

(c) Lands determined to be needed for urban or suburban purposes may be classified for disposal under any appropriate law other than the Public Land Sale Act, if disposal under such other authority would be consistent with local comprehensive plans, or in the absence of such plans, with the views of local governmental authorities.

(d) Where more than one form of disposal is possible, the authorized officer will select that course of action which will best promote development of the land for urban or suburban purposes.

§ 2430.4 Additional criteria for classification of lands valuable for public purposes.

(a) To be valuable for public purposes, lands must be suitable for use by a State or local governmental entity or agency for some noncommercial and nonindustrial governmental program or suitable for transfer to a non-Federal interest in a transaction which will benefit a Federal, State, or local governmental program.

(b) Lands found to be valuable for public purposes may be classified for sale pursuant to the Public Land Sale Act as chiefly valuable for public uses or development or for transfer in satisfaction of a State land grant, or for transfer to a State or local governmental agency in exchange for other property, or for transfer to a governmental agency under any applicable act of Congress other than the Recreation and Public Purposes Act (44 Stat. 741), as amended (43 U.S.C. 869-869-4), if (1) the proposed use includes profit activities or if the interested, qualified governmental agency and the authorized officer agree that there is no need for the perpetual dedication of the lands to public uses required by the Recreation and Public Purposes Act, and (2) in the case of sales under the Public Land Sale Act, adequate zoning regulations exist in the area in which the lands are located.

(c) Lands found to be valuable for public purposes will ordinarily be classified for sale or lease under the Recreation and Public Purposes Act (see Part 2740 and Subpart 2912 of this chapter) if the proposed use involves nonprofit activities and if it is determined by the authorized officer that the provisions of that Act are required to insure the continued dedication of the lands to such uses, or otherwise to carry out the purposes of the Act.

(d) Lands may be classified for exchange under appropriate authority where they are found to be chiefly valuable for public purposes because they have special values, arising from the interest of exchange proponents, for exchange for other lands which are needed for the support of a Federal program.

§ 2430.5 Additional criteria for classification of lands valuable for residential, commercial, agricultural, or industrial purposes.

(a) Lands which have value for residential, commercial, agricultural, or industrial purposes, or for more than one of such purposes, will be considered chiefly valuable for that purpose which represents the "highest and best use" of the lands, i.e., their most profitable legal use in private ownership.

(b) Lands may be classified for sale pursuant to the Public Land Sale Act as being chiefly valuable for residential, commercial, agricultural, or industrial uses or development (other than grazing use or use for raising native forage crops), if (1) adequate zoning regulations are in effect, and, where the lands also are needed for urban or suburban development, (2) adequate local governmental comprehensive plans have been adopted.

(c) Lands determined to be valuable for residential, commercial, agricultural, or industrial purposes may be classified for disposal under any appropriate authority other than the Public Land Sale Act if (1) disposal under such other authority would be consistent with local governmental comprehensive plans, or (2) in the absence of such plans, with the views of local governmental authorities.

(d) Lands outside of Alaska may be classified as suitable for homestead entry under Part 2510 of this chapter if they are (1) chiefly valuable for agricultural purposes, and (2) suitable for development as a home and farm for a man and his family, and (3) the anticipated return from agricultural use of the land would support the residents. If it is determined that the irrigation of land otherwise suitable for homestead entry would endanger the supply of adequate water for existing users or cause the dissipation of water reserves, such land will not be classified for entry. Land may be classified for homestead entry only if rainfall is adequate, or if under State law, there is available to the land sufficient irrigation water, to permit agricultural development of its cultivable portions.

(e) Lands may be classified as suitable for desert land entry under Part 2520 of this chapter if (1) the lands are chiefly valuable for agricultural purposes, and (2) all provisions concerning irrigation water set forth in § 2430.5(d) are met.

(f) Lands outside of Alaska may be classified as suitable for Indian allotment under Part 2530 of this chapter if (1) the lands are valuable for agricultural purposes, and (2) the lands are on the whole suitable for a home for an Indian and his family, and (3) the anticipated return from agricultural use of the land would support the residents, and (4) the requirements for water supplies set forth in § 2430.5(d) are met.

(g) Lands determined to be valuable for purposes other than public purposes may be determined to be suitable for exchange if the acquisition of the offered lands, the disposition of the public lands, and the anticipated costs of consummating the exchange will not disrupt governmental operations.

§ 2430.6 Additional criteria for lands valuable for other purposes.

Lands may be classified for disposal under any applicable authority where they are found to be chiefly valuable for purposes other than those described in §§ 2430.2-2430.5 of this section and to be not suitable for retention for multiple use management.

PART 2440—SEGREGATION BY CLASSIFICATION

Subpart 2440—Criteria for Segregation

Sec.
2440.1 Use of criteria.
2440.2 General criterion.
2440.3 Specific criteria for segregative effect of classification for retention.
2440.4 Specific criteria for segregative effect of classification for disposal.

Source: 35 FR 9562, June 13, 1970, unless otherwise noted.

Subpart 2440—Criteria for Segregation

§ 2440.1 Use of criteria.

The following criteria will govern the determination of the extent to which classifications and proposed classifications will segregate the affected lands from settlement, location, sale, selection, entry, lease, or other forms of disposal under the public land laws, including the mining and mineral leasing laws. The segregative effect of each classification or proposed classification will be governed by applicable laws and regulations, and will be stated in the classification notice or decision.

§ 2440.2 General criterion.

The public lands classified or proposed to be classified under the regulations of this part will be kept open to (i.e., not segregated from) as many forms of disposal as possible consistent with the purposes of the classification and the resource values of the lands.

§ 2440.3 Specific criteria for segregative effect of classification for retention.

(a) Public lands classified or proposed to be classified for retention for multiple-use management will be segregated from those forms of disposal which, if the lands remain open thereto, could:

(1) Interfere significantly with the management of the lands under principles of multiple use and sustained yield, or

(2) Impair or prevent, to an appreciable extent, realization of public values in the lands, or

(3) Impair or prevent, to an appreciable extent, realization of the objectives of retention and management set forth in Part 2420, or

(4) Lead to unnecessary expenditures of public or private funds arising out of individual efforts to acquire public lands under laws, which are in fact not applicable, because of the nature of the resources of the lands.

(b) In applying the criteria in paragraph (b)(1) of this section, land shall not be closed to mining location unless the nonmineral uses would be inconsistent with and of greater importance to the public interest than the continued search for a deposit of valuable minerals.

§ 2440.1 Specific criteria for segregative effect of classification for disposal.

Public lands classified or proposed to be classified for disposal will be segregated from those forms of disposal which, if the lands remained open thereto, could interfere with the orderly disposal of the lands pursuant to appropriate law. Public lands classified or proposed to be classified for sale under the Public Land Sale Act (78 Stat. 988, 43 U.S.C. 1411-18) will be segregated from all forms of disposal under the mining and mineral leasing laws.

PART 2450—PETITION-APPLICATION CLASSIFICATION SYSTEM

Subpart 2450—Petition-Application Procedures

Sec.

2450.1 Filing of petition.
2450.2 Preliminary determination.
2450.3 Proposed classification decision.
2450.4 Protests: Initial classification decision.
2450.5 Administrative review.
2450.6 Effect of final order.
2450.7 Right to occupy or settle.
2450.8 Preference right of petitioner-applicant.

Source: 35 FR 9563, June 13, 1970, unless otherwise noted.

Subpart 2450—Petition-Application Procedures

§ 2450.1 Filing of petition.

(a) When (1) land must be classified or designated pursuant to the authorities cited in § 2400.0-3 before an application may be approved and (2) the filing of applications is permitted prior to classification, the application together with a petition for classification on a form approved by the Director (hereinafter referred to collectively as a "petition-application") must be filed in accordance with the provisions of § 1821.2 of this chapter. Lists indicating the proper office for filing of applications may be obtained from the Director or any other officer of the Bureau of Land Management. Copies of the petition for classification form and the application forms may be obtained from the proper offices or from the Bureau of Land Management, Washington, D.C. 20240.

§ 2450.2 Preliminary determination.

Upon the filing of a petition-application, the authorized officer shall make a preliminary determination as to whether it is regular upon its face and, where there is no apparent defect, shall proceed to investigate and classify the land for which it has been filed. No further consideration will be given to the merits of an application or the qualifications of an applicant unless or until the land has been classified for the purpose for which the petition-applicatiion has been filed.

§ 2450.3 Proposed classification decision.

(a) The State Director shall make and issue a proposed classification decision which shall contain a statement of reasons in support thereof. Such decisions shall be served upon (1) each petitioner-applicant for the land, (2) any grazing permittee, licensee, or lessee on the land, or his representative, (3) the District Advisory Board, (4) the local governing board, planning commission, State coordinating committee, or other official or quasi-official body having jurisdiction over zoning in the geographic area within which the lands are located, and (5) any governmental officials or agencies from whom the record discloses comments on the classification have been received. If the decision affects more than 2,560 acres and would lead to the disposal of the lands, the decision will also be published in accordance with the provisions of Subpart 2462.

(b) When there are multiple petition-applications for the same land, the proposed classification decision shall state which petition-application, if any, will be entitled to preference under applicable law; or where no petition-application has been filed for the purpose for which the land is proposed to be classified, the decision shall so state.

(1) When multiple petition-applications have been filed for the same land, the one first filed for the pur-

pose for which the land is classified will be entitled to preference under applicable law.

(2) When two or more petition-applications have been simultaneously filed for the purpose for which the land is classified, the petition-application entitled to preference will be the first to be selected by drawing.

(3) If no petition-application has been filed for the purpose for which it is proposed to classify the land, the proposed decision shall state that the land will be opened to application by all qualified individuals on an equal-opportunity basis after public notice.

§ 2450.4 Protests: Initial classification decision.

(a) For a period of 30 days after the proposed classification decision has been served upon the parties listed in § 2450.3(a), protests thereto may be filed by an interested party with the State Director. No particular form of protest is required under this subparagraph, it being the intent of this procedure to afford the State Director the opportunity to review the proposed classification decision in the light of such protests.

(b) If no protests are filed within the time allowed, the proposed classification action shall be issued as the initial classification decision of the State Director, and shall be served on the petitioner-applicants and upon grazing permittees, licensees, or lessees.

(c) If protests are timely filed, they shall be reviewed by the State Director, who may require statements or affidavits, take testimony, or conduct further field investigations as are deemed necessary to establish the facts. At the conclusion of such review, the State Director shall issue an initial classification decision, either revised or as originally proposed, which shall be served on all interested parties.

§ 2450.5 Administrative review.

(a) For a period of 30 days after service thereof upon all parties in interest, the initial classification decision of the State Director shall be subject to the exercise of supervisory authority by the Secretary of the Interior or for the purpose of administrative review.

(b) If, 30 days from receipt by parties in interest of the initial decision of the State Director, the Secretary has not either on his own motion, or motion of any protestant, petitioner-applicant, or the State Director, exercised supervisory authority for review, the initial classification decision shall become the final order of the Secretary.

(c) The exercise of supervisory authority by the Secretary shall automatically vacate the initial classification decision and the final Departmental decision shall be issued by the Secretary of the Interior and served upon all parties in interest.

(d) No petitioner-applicant or protestant to a proposed classification decision of a State Director to whom the provisions of this section are applicable shall be entitled to any administrative review other than that provided by this section or to appeal under provisions of Parts 1840 and 1850 of this chapter.

§ 2450.6 Effect of final order.

(a) A final order of the Secretary shall continue in full force and effect so long as the lands remain subject to classification under the authorities cited in Subpart 2400 until an authorized officer revokes or modifies it. Until it is so revoked or modified, all applications and petition-applications for the lands not consistent with the classification of the lands will not be allowed. Any payments submitted therewith will be returned. If the order is revoked or modified, the land will be opened to entry on an equal-opportunity basis after public notice in accordance with applicable regulations for the purpose for which it may be classified.

(b) Nothing in this section, however, shall prevent the Secretary of the Interior, personally and not through a delegate, from vacating or modifying a final order of the Secretary. In the event that the Secretary vacates or modifies a final order within sixty days of the date it became final, any preference right of a petitioner-applicant will be restored.

§ 2450.7 Right to occupy or settle.

The filing of a petition-application gives no right to occupy or settle upon the land. A person shall be entitled to the possession and use of land only after his entry, selection, or location has been allowed, or a lease has been issued. Settlement on the land prior to that time constitutes a trespass.

§ 2450.8 Preference right of petitioner-applicant.

Where public land is classified for entry under section 7 of the Taylor Grazing Act or under the Small Tract Act pursuant to a petition-application filed under this part, the petitioner-applicant is entitled to a preference right of entry, if qualified. If, however, it should be necessary thereafter for any reason to reject the application of the preference right claimant, the next petitioner-applicant in order of filing shall succeed to the preference right. If there is no other petitioner-applicant the land may be opened to application by all qualified individuals on an equal-opportunity basis after public notice or the classification may be revoked by the authorized officer.

PART 2460—BUREAU INITIATED CLASSIFICATION SYSTEM

Subpart 2461—Multiple-Use Classification Procedures

Sec.
2461.0-1 Purpose.
2461.1 Proposed classifications.
2261.2 Classifications.
2461.3 Administrative review.
2461.4 Changing classifications.
2461.5 Segregative effect.

Subpart 2462—Disposal Classification Procedure—Over 2,560 Acres

2462.0-3 Authority.
2462.1 Publication of notice of, and public hearings on, proposed classification.
2462.2 Publication of notice of classification.
2462.3 Administrative review.
2462.4 Segregative effect of publication.

Subpart 2461—Multiple-Use Classification Procedures

Source: 35 FR 9564, June 13, 1970, unless otherwise noted.

§ 2461.0-1 Purpose.

Formal action to classify land for retention for multiple use management will be governed by the following procedures

§ 2461.1 Proposed classifications.

(a) Proposed classifications will be clearly set forth on a map by the authorized officer, and on the Land Office records.

(1) Notice of proposed classifications involving more than 2,560 acres will be, and those involving 2,560 acres or less may be, published in the Federal Register and an announcement in a newspaper having general circulation in the area or areas in the vicinity of the affected lands.

(2) Notice of the proposals will be sent to authorized users, licensees, lessees, and permittees, or their selected representatives, the head of the governing body of the political subdivision of the State, if any, having jurisdiction over zoning in the geographic area in which the lands are located, the governor of that State, the BLM multiple use advisory board in that State, and the District advisory board and to any other parties indicating interest in such classifications.

(3) The notice will indicate where and when the map and Land Office records may be examined. The notice will specify the general location of the lands, the acreage involved, and the extent to which the land is proposed to be segregated from settlement, location, sale, selection, entry, lease, or other form of disposal under the public land laws, including the mining and mineral leasing laws. The notice of proposed classification will specify the period during which comments will be received, which will not be less than 60 days from date of publication of the notice.

(4) The authorized officer will hold a public hearing on the proposal if (i) the proposed classification will affect more than 25,000 acres or (ii) he determines that sufficient public interest exists to warrant the time and expense of a hearing.

§ 2461.2 Classifications.

Not less than 60 days after publication of the proposed classification, a classification will be made by the authorized officer, and a notice of classification published in the FEDERAL REGISTER and recorded in the Land Office records and on a map which will be filed in the local BLM District Office. Such map will be available for public inspection.

§ 2461.3 Administrative review.

For a period of 30 days after publication of the classification in the FEDERAL REGISTER, the classification shall be subject to the exercise of administrative review and modification by the Secretary of the Interior.

§ 2461.4 Changing classifications.

Classifications may be changed, using the procedures specified in this subpart.

§ 2461.5 Segregative effect.

Segregative effect of classifications and proposed classifications:

(a) Publication in the FEDERAL REGISTER of a notice of proposed classification pursuant to § 2461.1(a) or of a notice of classification pursuant to § 2461.2 will segregate the affected land to the extent indicated in the notice.

(b) The segregative effect of a proposed classification will terminate in one of the following ways:

(1) Classification of the lands within 2 years of publication of the notice of proposed classification in the FEDERAL REGISTER;

(2) Publication in the FEDERAL REGISTER of a notice of termination of the proposed classification;

(3) An Act of Congress;

(4) Expiration of a 2-year period from the date of publication of the notice of proposed classification without continuance as prescribed by the Classification and Multiple Use Act, or expiration of an additional period, not exceeding 2 years, if the required notice of proposed continuance is given.

(c) The segregative effect of a classification for retention will terminate in one of the following ways:

(1) Reclassification of the lands for some form of disposal;

(2) Publication in the FEDERAL REGISTER of a notice of termination of the classification;

(3) An Act of Congress;

(4) Expiration of the classification.

Subpart 2462—Disposal Classification Procedure—Over 2,560 Acres

SOURCE: 35 FR 9564, June 13, 1970, unless otherwise noted.

§ 2462.0-3 Authority.

Section 2 of the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986, 43 U.S.C. 1412), requires the Secretary of the Interior to take certain actions when he proposes the classification for sale or other disposal under any statute of a tract of land in excess of 2,560 acres.

§ 2462.1 Publication of notice of, and public hearings on, proposed classification.

The authorized officer shall publish a notice of his proposed classification in the FEDERAL REGISTER and an announcement in a newspaper having general circulation in the area or areas in the vicinity of the affected land. The notice shall include the legal description of the affected land, the law or laws under which the lands would be disposed of together with such other information as the authorized officer deems pertinent. Copies of the notice will be sent to the head of the governing body of the political subdivision of the State, if any, having jurisdiction over zoning in the geographic area within which the affected lands are located, the governor of that State and the BLM multiple use advisory board in that State, the land-use planning officer and land-use planning committees, if any, of the county, in which the affected lands are located, the authorized user or users of the lands or their selected representatives, all petitioner-applicants involved, and any other party the authorized officer determines to have an interest in the proper use of the lands. The authorized officer will hold a public hearing on the proposal if (a) the proposed classification will affect more than 25,000 acres or (b) he determines that sufficient public interest exists to warrant the time and expense of a hearing.

§ 2462.2 Publication of notice of classification.

After having considered the comments received as the result of publication, the authorized officer may classify the lands any time after the expiration of 60 days following the publication of the proposed classification in the FEDERAL REGISTER. The authorized officer shall publicize the classification in the same manner as the proposed classification was publicized, indicating in the notice the differences, if any, between the proposed classification and the classification.

§ 2462.3 Administrative review.

For a period of 30 days after publication in the FEDERAL REGISTER of a notice of classification for disposal, the classification shall be subject to the exercise of supervisory authority by the Secretary of the Interior for the purpose of administrative review. If, 30 days from date of publication, the Secretary has neither on his own motion, on motion of any protestant or the State Director exercised supervisory authority for review, the classification shall become the final order of the Secretary. The exercise of supervisory authority by the Secretary shall automatically vacate the classification and reinstate the proposed classification together with its segregative effect. In this event the final departmental decision shall be issued by the Secretary and published in the FEDERAL REGISTER.

§ 2462.4 Segregative effect of publication.

(a) Publication in the FEDERAL REGISTER of a notice of proposed classification pursuant to § 2462.1 or of a notice of classification pursuant to § 2462.2 will segregate the affected land from all forms of disposal under the public land laws, including the mining laws except the form or forms of disposal for which it is proposed to classify the lands. However, publication will not alter the applicability of the public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral and vegetative resources, other than under the mining laws.

(b) The segregative effect of a proposed classification will terminate in one of the following ways:

(1) Classification of the lands within 2 years of publication of the notice of proposed classification in the FEDERAL REGISTER;

(2) Publication in the FEDERAL REGISTER of a notice of termination of the proposed classification;

(3) An Act of Congress;

(4) Expiration of a 2-year period from the date of publication of the notice of proposed classification without continuance as prescribed by the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986, 43 U.S.C. 1411-18), or expiration of an additional period, not exceeding 2 years, if the required notice of proposed continuance is given.

(c) The segregative effect of a classification for sale or other disposal will terminate in one of the following ways:

(1) Disposal of the lands;

(2) Publication in the FEDERAL REGISTER of a notice of termination of the classification;

(3) An Act of Congress;

(4) Expiration of 2 years from the date of publication of the proposed classification without disposal of the land and without the notice of proposed continuance as prescribed by the Classification and Multiple Use Act; or

(5) Expiration of an additional period, not exceeding 2 years, if the required notice of proposed continuance is given.

PART 2470—POSTCLASSIFICATION ACTIONS

Subpart 2470—Opening and Allowance

Sec.
2470.1 Opening of lands to disposal.
2470.2 Allowance and entry.

Subpart 2470—Opening and Allowance

§ 2470.1 Opening of lands to disposal.

After lands have been classified for disposal, the authorized officer shall, at the appropriate time, open the lands to those forms of disposal consistent with the classification.

[35 FR 9565 June 13, 1970]

§ 2470.2 Allowance and entry.

(a) After lands are classified pursuant to the regulations of this part, and opened for entry or other disposal, all the laws and regulations governing the particular kind of entry, location, selection, or other disposal must be complied with in order for title to vest or other interests to pass.

(b) After lands are classified for disposal under the regulations of this Subpart, the lands shall be offered for sale or other disposal consistent with the classification. If a petitioner-applicant does not have a preference right under § 2450.8, the lands shall be opened on an equal-opportunity basis.

[35 FR 9565 June 13, 1970]

Group 2500—Disposition; Occupancy and Use

PART 2510—HOMESTEADS

Subpart 2511—Original Homesteads

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2511.0-8 Lands subject to entry.
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2515.8-7 Proof.
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2515.8-9 Cancellation of entries.

Subpart 2511—Original Homesteads

AUTHORITY: R.S. 2478; 43 U.S.C. 1201; unless otherwise noted.

SOURCE: 35 FR 9565, June 13, 1970, unless otherwise noted.

§ 2511.0-7 Cross references.

(a) For surveys in Alaska, and surveys and resurveys, generally, see Part 9180 of this chapter.

(b) For general regulations involving applications and entries, see Subpart 1823 of this chapter. For proofs, see Subpart 1824 of this chapter. For railroad grants see Subpart 2630 of this chapter.

(c) For equitable adjudication, see Subpart 1870 of this chapter.

(d) For desert-land entries, see Subpart 2520 of this chapter.

(e) For soldiers' and sailors' homestead and preference rights, see Subpart 2096 of this chapter.

(f) For proofs, see Subpart 1824 of this chapter.

(g) For agricultural entries on mineral lands, see Subpart 2093 of this chapter.

(h) For enlarged homesteads, see Subpart 2514.

§ 2511.0-8 Lands subject to entry.

The laws relating to homesteads provide that homestead entry may be made on unappropriated surveyed public lands which are adaptable to agricultural use, with the following exceptions:

(a) Public lands are not subject to homestead entry if they are mineral or saline in character. However, public lands withdrawn, classified, or valuable for coal, phosphate, nitrate, potash, oil, gas, sodium, or asphaltic minerals may be subject to homestead entry if the requirements of Subpart 2093 of this chapter are met.

(b) Public lands are not subject to homestead entry if they are occupied for purposes of trade or business.

(c) Public lands are not subject to homestead entry if they are within the limits of any withdrawal, reservation, or incorporated town or city. However, public lands withdrawn or reserved by Executive Order 6910 of November 26, 1934, as amended, or Executive Order 6964 of February 5, 1935, as amended, or by the establishment of grazing districts under section 1 of the Act of June 28, 1934 (48 Stat. 1269), as amended (43 U.S.C. 315), are subject to homestead entry if they are so classified pursuant to Group 2400 of this chapter.

§ 2511.0-9 Mortgage loans.

(a) *Mortgage loans on existing homestead entries.* (1) A homestead entryman desiring a loan on an existing homestead entry under the act of October 19, 1949 (63 Stat. 883, 7 U.S.C. Supp. III, secs. 1006a, 1006b) should consult the Farmers Home Corporation of the Department of Agriculture.

(2) Where a homestead entry subject to a mortgage loan is canceled or relinquished and the loan has not been satisfied, a lien held by the United States acting through the Secretary of Agriculture would attach to the land under the act of October 19, 1949, and such land becomes subject to homestead entry for a period of one year from the date the canceled entry was closed or for one year from the date the entry was relinquished by an applicant who is qualified for an initial loan and who has not exercised his homestead rights. An applicant for such land must first consult the Farmers Home Corporation. Such a homestead application must not be filed in the land office until the applicant has been selected and directed to do so by the Farmers Home Corporation.

(3) The final arrangements of a mortgage loan between the homestead applicant and the Farmers Home Corporation are not completed until after the homestead application has been allowed as an entry. Upon the allowance of such an application the entryman will be notified not to occupy the land until he has completed the arrangements of the loan and he has been instructed to occupy the land by the Farmers Home Corporation.

(4) Decisions canceling homestead entries subject to such mortgage liens for defaults on the mortgage or for noncompliance with the homestead laws will contain a clause allowing 15 days from receipt of notice of the decision within which to respond or to appeal.

(5) If the land in a relinquished or canceled homestead entry subject to a mortgage lien is not entered during the period of one year from the date of relinquishment or one year from the date the canceled homestead entry was closed, the land will become sub-

ject to sale by the Farmers Home Corporation.

(b) *Mortgage loans on enlarged homesteads.* A homestead entryman who desires to secure a loan on an existing homestead entry, or a homestead applicant who wishes to make a homestead entry for lands in a canceled or relinquished homestead entry subject to a mortgage lien held by the United States acting through the Secretary of Agriculture under the act of October 19, 1949 (63 Stat. 883, 7 U.S.C. Supp. III, secs. 1006a, 1006b), should proceed in accordance with paragraph (a) of this section.

(c) *Mortgage liens.* A mortgage lien held by the United States acting through the Secretary of Agriculture shall not extend to mineral deposits in the lands, which have been or may be reserved to the United States pursuant to law.

§ 2511.1 Applicants.

(a) *Examination of land.* (1) Persons desiring to make homestead entries should first fully inform themselves as to the character and quality of the lands they desire to enter, and should in no case apply to enter until they have visited and fully examined each legal subdivision for which they make application, as satisfactory information as to the character and occupancy of public lands can not be obtained in any other way.

(2) As each applicant is required to state that he is well acquainted with the character of the land described in his application, and as all entries are made subject to the rights of prior settlers, the applicant can not make the statement that he is acquainted with the character of the land, or be sure that the land is not already appropriated by a settler, until after he has actually inspected it.

(b) *Qualifications and disqualifications.* Homestead entries may be made by any person who does not come within any one of the following classes:

(1) Married women, except as stated in paragraph (c) of this section.

(2) Persons who have already made homestead entry, except as stated in Subparts 2512 and 2513.

(3) Foreign-born persons who have not declared their intention to become citizens of the United States.

(4) Persons who are the owners of more than 160 acres of land in the United States.

(5) Persons under the age of 21 years who are not the heads of families, except minors who make entry as heirs.

(6) Persons who have acquired title to or are claiming, under any of the agricultural public land laws, through settlement or entry made since August 30, 1890, any other lands which, with the lands last applied for, would amount in the aggregate to more than 320 acres. Exception is made, however, as to an entry under one of the enlarged homestead acts, which may be allowed provided applicant's claims under the timber and stone, desert land, and preemption laws do not make up approximately 320 acres, and do not with the homestead claim aggregate more than 480 acres.

(c) *Married women.* A married woman who has all of the other qualifications of a homestead may make a homestead entry under any one of the following classes:

(1) Where she has been actually deserted by her husband.

(2) Where her husband is incapacitated by disease or otherwise from earning a support for his family and the wife is really the head and main support of the family.

(3) Where the husband is confined in a penitentiary and she is actually the head of the family.

(4) Where the married women is the heir of a settler or contestant who dies before making entry.

(5) Where a married woman made improvements and resided on the lands applied for before her marriage, she may enter them after marriage if her husband is not holding other lands under an unperfected homestead entry at the time of the marriage; and this last condition does not apply if each party has had compliance with the law for 1 year next before the marriage and neither one abandons the land prior to filing application for entry.

(6) The marriage of an entrywoman will not defeat her right to acquire

title to the land if she continues to reside thereon and otherwise comply with the law; but ordinarily the failure of her husband to live upon the homestead with her is treated as an evidence of bad faith, requiring testimony for its rebuttal. Husband and wife cannot maintain separate residences on their respective homestead entries, and if at the time of marriage each is holding an unperfected entry on which residence must be had in order to acquire title, they cannot hold both entries unless they are entitled to the benefits of the act of April 6, 1914, as amended by the act of March 1, 1921 (41 Stat. 1193; 43 U.S.C. 167), explained in § 166.62 (38 Stat. 312, 41 Stat. 1193; 43 U.S.C. 167).

(d) *Widows.* A widow, if otherwise qualified, may make a homestead entry notwithstanding the fact that her husband made an entry and notwithstanding she may be at the time claiming the unperfected entry of her deceased husband.

(e) *Office holders.* Homestead entrymen are not entitled to any special privileges whatsoever in connection with their claims by reason of the fact that they are appointed or elected to public office, the duties of which require their residence elsewhere than on the homesteads. This also applies to civil-service employees.

(f) *Insanity of entryman.* Neither residence nor cultivation by an insane homestead entryman is necessary after he becomes insane, if such entryman made entry and established residence before he became insane and complied with the requirements of the law up to the time his insanity began. Proof on the entry may be submitted by his duly appointed guardian or committee. However, if the entryman regains his sanity before the expiration of 3 years after the date of the entry, he is required to reestablish residence on the land and comply with the law; and he must himself submit proof unless the unsoundness of mind recurs.

(g) *Adjoining farm entry.* An adjoining farm entry may be made for such an amount of public lands lying contiguous to lands owned and resided upon by the applicant as will not, with the lands so owned and resided upon, exceed in the aggregate 160 acres; but no person will be entitled to make entry of this kind who is not qualified to make an original homestead entry. A person who has made one homestead entry, although for a less amount than 160 acres, and perfected title thereto, is not qualified to make an adjoining farm entry. In connection with an entry of this character, there must be shown the required amount of residence and cultivation after the date thereof, but both residence and cultivation may be had on the original tract.

§ 2511.2 Initiation of claims.

(a) *Ways in which claims may be initiated; area enterable.* (1) Claims in Alaska under homestead laws may be initiated by settlement on either surveyed or unsurveyed lands of the kind mentioned in the foregoing section. Claims may also be initiated on surveyed lands of that kind by the presentation of an application to enter.

(2) Under the law relating to ordinary lands a homestead entry is limited to 160 acres, but this area may sometimes be slightly exceeded where the tract is made up of irregular subdivisions.

(b) *Alienation of all or part of claim; mortgages; relinquishments.* (1) The alienation of all or any part of the land embraced in a homestead prior to making proof, except for the public purposes mentioned in section 2288, Revised Statutes (43 U.S.C. 174), will prevent the entryman from making satisfactory proof, since he is required to swear that he has not alienated any part of the land except for the purposes mentioned in section 2288, Revised Statutes.

(2) A mortgage by the entryman prior to final proof for the purpose of securing money for improvements, or for any other purpose not inconsistent with good faith, is not considered such an alienation of the land as will prevent him from submitting satisfactory proof. In such a case, however, should the entry be canceled for any reason prior to patent, the mortgagee would have no claim on the land or against the United States for the money loaned. A mortgagee who files notice

of his interest in the land office becomes entitled to receive and be given the same notice of any contest or other proceeding thereafter had affecting the land which is required to be given the original entryman or claimant.

(3) The right of a homestead entryman to patent is not defeated by the alienation of all or a part of the land embraced in his entry after the submission of final proof and prior to patent, provided the proof submitted is satisfactory. Such an alienation is, however, at the risk of the entryman, for if the reviewing officers of the Department of the Interior subsequently find the final proof so unsatisfactory that it must be wholly rejected and new proof required, the entryman can not then truthfully make the nonalienation affidavit required by section 2291, Revised Statutes (43 U.S.C. 164), and his entry must in consequence be canceled. The purchaser takes no better title than the entryman had, and if the entry is canceled the purchaser's title must necessarily fail.

(4) Relinquishments run to the United States alone, and no person obtains any right to the land by the mere purchase of a relinquishment of a filing or entry.

§ 2511.3 Procedures.

§ 2511.3-1 Petitions and applications.

(a) A person who desires to enter public lands outside of Alaska must file an application together with a petition on forms approved by the Director. However, if the lands described in the application have been already classified and opened to homestead entry under the provisions of this part, no petition is required. The documents must be filed in accordance with the provisions of § 1821.2 of this chapter. (See Subpart 2450.)

(b) Applications for public lands in Alaska subject to entry under the regulations of this part must be filed with the proper land office on a form approved by the Director.

§ 2511.3-2 Showing required of applicant.

(a) *General requirements.* Each application to enter and the statements accompanying it must recite all the facts necessary to show that the applicant is acquainted with the land; that the land is not, to the applicant's knowledge, either saline or mineral in character; that the applicant possesses all of the qualifications of a homestead entryman; that the application is honestly and in good faith made for the purpose of actual settlement and cultivation; and not for the benefit of any other person, persons, or corporation; that the applicant will faithfully and honestly endeavor to comply with the requirements of the law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that the applicant is not acting as the agent of any person, persons, corporation, or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered or any part thereof; that the application is not made for the purpose of speculation, but in good faith to obtain a home for the applicant, and that the applicant has not directly or indirectly made, and will not make any agreement or contract in any way or manner with any person, or persons, corporation, or syndicate whatsoever by which the title he may acquire from the Government to the lands applied for shall inure, in whole or in part, to the benefit of any person except himself.

(b) *Indian applicants*—(1) *Certificate required under act of July 4, 1884.* (i) The authorizing officer will require an Indian homestead applicant under the act of July 4, 1884 (23 Stat. 96; 43 U.S.C. 190), to submit a certificate from the Commissioner of Indian Affairs that he is entitled, as an Indian, to make such an entry.

(ii) When such an application is presented without this certificate the authorizing officer will suspend the same and notify the applicant that 90 days are allowed within which to submit such certificate as to the right to allotment, and that upon failure to submit the same within the time allowed the application will be rejected.

(iii) Where an Indian has filed an allotment application and the application has been rejected for the reason that the applicant is not entitled as an Indian to an allotment, such action will not prejudice the right of such applicant to file a homestead application, provided that a certificate from the Commissioner of Indian Affairs, showing that the applicant is entitled to the benefits of the said act of July 4, 1884, is presented.

(2) *Where Indian makes entry as citizen.* If an Indian makes application under the general homestead act, the authorizing officer will allow such an Indian, if otherwise qualified, to make entry under that act, without further questioning and without requiring any certificate from the Commissioner of Indian Affairs.

(3) *Charges, patents.* The act of July 4, 1884 (23 Stat. 6; 43 U.S.C. 190) expressly states that no fees or commissions shall be charged on account of Indian homestead entries, and a patent different in character from the non-Indian homestead patent is issued on entries made under said act or the act of March 3, 1875 (18 Stat. 420; 43 U.S.C. 189).

(c) *Settlers, widows, devisees, or heirs.* All applications by persons claiming as settlers must in addition to the facts required in paragraph (a) of this section state the date and describe the acts of settlement under which they claim a preferred right of entry, and applications by the widows, devisees, or heirs of settlers must state facts showing the death of the settler and their right to make entry, that the settler was qualified to make entry at the time of his death, and that the heirs or devisees applying to enter are citizens of the United States or have declared their intentions to become such citizens; but they are not required to state facts showing any other qualifications of a homestead entryman and the fact that they have made a former entry will not prevent them from making an entry as such heirs or devisees, nor will the fact that a person has made entry as the heir or devisee of the settler prevent him from making an entry in his own individual right if he is otherwise qualified to do so.

§ 2511.3-3 Payments; form of remittance; receipts; notice.

(a) When a homesteader applies to make entry he must pay a nonrefundable application service charge of $25. In addition, he must pay with his final proof a nonrefundable service charge of $25. A successful contestant for the lands, pursuant to the act of May 14, 1880, as amended (21 Stat. 141, 43 U.S.C. 185) must pay, as a cancellation service charge, an additional $10, which is not returnable. On all final proofs made before the authorizing officer, or before any other officer of the Bureau of Land Management authorized to take proofs, the claimant must pay to the authorizing officer the costs of reducing the testimony to writing, as determined by the authorizing officer. No proof shall be accepted until all charges have been paid.

(b) Remittances other than cash or currency are to be made payable to the Bureau of Land Management. Checks or drafts are accepted subject to collection and final payment without cost to the government.

(c) A receipt for the money tendered in connection with an application to enter is at once issued, but this is merely evidence that the money has been paid and as to the purpose thereof. If the application is allowed and the entry placed of record, formal notice of this fact is issued on the prescribed form; if the application is rejected or suspended, notice of such action is forwarded to the applicant as soon as practicable.

§ 2511.3-4 Proof.

(a) *Time for making.* (1) Either final or commutation proof may be made at any time when it can be shown that there is a habitable house upon the land and that the required residence and cultivation have been had. Proof must be submitted within 5 years. Failure to submit proof within the proper period is ground for cancellation of the entry unless good reason for the delay appears; satisfactory reasons being shown, final certificate may be issued.

(2) Final proofs in all cases where the same are required by the general land laws or regulations of the Department, should be taken in accordance with the published notice: *Provided, however,* That such testimony may be

taken within 10 days following the time advertised in cases where accident or unavoidable delays have prevented that applicant or his witnesses from making such proof on the day specified.

(b) *Officers qualified to take proof.* Final or commutation proofs may be made before any of the officers mentioned in § 1821.3-2 of this chapter as being authorized to administer oaths.

(c) *Notice; publication.* (1) Any person desiring to make homestead proof should first forward a written notice of his desire to the authorizing officer of the proper office, giving his post-office address, the number of his entry, the name and official title of the officer before whom he desires to make proof, the place at which the proof is to be made, and the name and post-office addresses of at least four of his neighbors who can testify from their own knowledge as to facts which will show that he has in good faith complied with all the requirements of the law.

(2) The authorizing officer will issue a notice naming the time and place for submission of proof and cause same to be published at entryman's expense for 30 days preceding submission of proof in the newspaper designated by the manager. The publication must be made once a week for five consecutive weeks, in accordance with § 1824.3 of this chapter.

(3) The homesteader must arrange with the publisher for publication of the notice of intention to make proof and make payment therefor directly to him. The authorizing officer will be responsible for the correct preparation of the notice.

(4) On the day named in the notice the entryman must appear before the officer designated to take proof with at least two of the witnesses named in the notice; but if for any reason the entryman and his witnesses are unable to appear on the date named, the officer should continue the case from day to day until the expiration of 10 days, and the proof may be taken on any day within that time when the entryman and his witnesses appear, but they should, if it is possible to do so, appear on the day mentioned in the notice.

(d) *Who may submit proof*—(1) *General requirements.* Final proof must be made by the entrymen personally or their widows, heirs, or devisees, and can not be made by agents, attorneys in fact, administrators, or executors, except as explained in § 2511.1 and §§ 2511.3-4(d)(4)(i) and 2511.5-1(a). Final proof can be made only by citizens of the United States.

(2) *Minor orphans of soldiers and sailors.* Where entries are made and proof offered for minor orphan children of soldiers or sailors the minors may be represented by their guardian.

(3) *When homesteaders intermarry.* (i) Where a homestead entryman or settler and a homestead entrywoman or settler intermarry after each has fulfilled the requirements of the law for 1 year, the husband (under the provisions of the act of April 6, 1914 (38 Stat. 312) as amended by the act of March 1, 1921 (41 Stat. 1193; 43 U.S.C. 167)) may elect on which of the entries the home shall be made, after which their residence there shall constitute compliance with the residence requirements as to both homesteads.

(ii) The act of April 6, 1914, as amended, applies to entries and settlement claims initiated before or after its date, and before or after the date of the amendatory act; to become entitled to its benefits, it is required that each of the parties shall have complied with the requirements of the homestead laws for not less than 1 year next preceding their marriage. It is not necessary that either the husband or the wife shall have had an entry place of record before the marriage.

(iii) The law confers upon the husband the privilege of electing on which of the two entries the family shall reside. His election must be supported by the statements of both the parties, describing their entries and showing the facts as to the residence, cultivation, and improvements already had in connection therewith. Only in cases where the tracts involved are situated in different districts will it be necessary that the election and statements be executed in duplicate; then copies of all papers must be filed in each office.

(iv) Though the election be accepted, proofs on the entries will be submitted separately, as in other cases; it will be necessary to show residence on the selected homestead from approximately the date of the marriage, and on the entries of the respective parties before that time. The act of April 6, 1914, as amended, makes no change whatever in the requirements as to cultivation or improvements, as the case may be, or as to the necessity of having a habitable dwelling on the land; compliance with the homestead law in these regards must be shown as to each entry, precisely as though the marriage had not taken place. In no case can proof be made on a claim before an entry for the land involved shall have been duly placed on record in accordance with an approved survey.

(v) If proof be made on the entry selected as the home before title to the other is earned, residence may nevertheless be continued on the perfected entry and credited to the other. However, the act has no application to cases where the requirements of law have been fulfilled, and proof made, as to one of the entries prior to the marriage.

(4) *Deserted wife.* (i) The act of October 22, 1914 (38 Stat. 766; 43 U.S.C. 170), provides where the wife of a homestead settler or entryman, while residing upon the homestead claim and prior to the submission of final proof, has been abandoned and deserted by her husband for more than 1 year, she may submit proof (by way of commutation or otherwise), on the entry and secure patent in her own name, being allowed credit for all residence and cultivation had and improvements made, either by herself or by her husband.

(ii) Upon the wife's filing notice of intention to submit proof, together with a statement alleging desertion, as stated in (d)(4)(i) of this section, and paragraph, all information in her possession as to the entryman's whereabouts, including his last known post-office address and the address near the land where he received his mail, the authorizing officer will prepare and issue a summons in substantially the following form and deliver it to the wife for service:

To [here insert name] homestead entryman:

You are hereby notified that [here insert name], claiming that she is your wife, and that you have abandoned and deserted her for more than one year last past, has filed application to be allowed to submit proof upon your homestead entry, serial No.——, for [here insert description of the land], to the end that patent for the land may issue in her name. This proceeding is authorized by the provisions of an act of Congress approved October 22, 1914, and you will be allowed 30 days after notice hereof within which to file in this office your denial of the charges. If such denial be filed, you may, at the time to be set for taking of proof or on a date to be then fixed, offer testimony in support of such denial:

(iii) Personal service of the summons must be made if possible; such service may be made by any person over the age of 18 years, or by registered mail. When served by registered mail, proof thereof must be accompanied by post-office registry return receipt, showing delivery of the letter to the entryman; where service is made otherwise than by mail, proof thereof must be by written acknowledgment of the entryman, or by statement of the person serving the summons, showing its delivery to the entryman. If personal service cannot be made, the summons must be sent by registered mail to the last known address of entryman and to the post office nearest the land, or to that near the land named by the wife in her preliminary statement; proof of such attempted service shall be by a statement of the person mailing the letter, to which should be attached the postmaster's receipts therefor.

(iv) Within 30 days after service of summons, the entryman may file his statement denying the charge of abandonment and desertion. The denial must bear evidence that a copy thereof has been served on the wife.

(v) After the expiration of 30 days from personal service of the summons, or 40 days from the date of mailing, unless a denial by entryman be sooner filed, the authorizing officer will issue notice of intention to submit proof. The form in general use must be modified to show that the proof is to be submitted by the deserted wife, and must contain a paragraph as follows:

The entryman [here insert name] is notified that, by submission of said proof, his wife [here insert name] seeks to obtain patent for the land in her own name.

(vi) If the entryman shall have filed denial of the alleged desertion and abandonment, and appears, in person or by agent or attorney, on the day set for the taking of proof, testimony may be submitted to determine the facts relative to the alleged desertion, and the final proof testimony will be taken in accordance with existing regulations. But the authorizing officer, for any reason deemed sufficient, may continue the hearing to a later date.

(*a*) At the hearing on the denial of desertion the entryman must pay the costs of taking the testimony.

(*b*) All hearings and subsequent proceedings shall be in accord with Parts 1840 and 1850 of this chapter pertaining to contests.

(vii) If entryman fails to deny the charge of desertion, or if same be sustained and the case closed, final certificate shall issue in the name of the deserted wife, provided the proof be in all respects sufficient.

(e) *Citizenship requirements.* (1) When proof is submitted it must be shown that the homesteader is a citizen of the United States: *Provided, however,* That a homestead entrywoman who is a citizen when she makes her filing and thereafter marries an alien need not show that her husband is an American citizen, but must show that he is entitled to become one (38 Stat. 740; 43 U.S.C. 168).

(2) In all cases of applications for entry or proofs in support of entries by married women otherwise duly qualified to make such entry or proof, a showing must be made of the facts concerning the marital status and citizenship in accordance with Subpart 1811 of the chapter.

(3) Evidence of declaration of intention to become a citizen of the United States or other evidence necessary to establish citizenship of foreign-born applicants should be received only when made in accordance with Subpart 1811 of this chapter.

§ 2511.3-5 Amendments; exercise of equitable powers.

Applications for amendment presented pursuant to § 1821.6-5(a) will not be granted, except where at least one legal subdivision of the lands originally entered is retained in the amended entry, and any such application must be submitted within 1 year next after discovery by the entryman of the existence of the conditions relied upon as entitling him to the relief he seeks, or within 1 year succeeding the date on which, by the exercise of reasonable diligence, the existence of such conditions might have been discovered: *Provided, nevertheless,* That where an applicant for amendment has made both homestead and desert land entries for contiguous lands, amendment may be granted whereby to transfer the desert-land entry, in its entirety, to the land covered by the homestead entry, and the homestead entry in its entirety, to the land covered by the desert-land entry, or whereby to enlarge the desert-land entry in such manner as that it will include the whole or some portion of the lands embraced in the homestead entry sufficient equitable reason for such enlargement being exhibited, and the area of the enlarged entry in no case exceeding 320 acres. Applications for such amendments may be made under §§ 1821.6 and 2521.7(a) and on the prescribed form, insofar as the same are applicable. A supplemental statement should also be furnished, if necessary, to show the facts.

§ 2511.4 Requirements for proof.

§ 2511.4-1 Habitable house.

The homestead entryman must have a habitable house upon the land entered at the time of submitting proof. Other improvements should be of such character and amount as are sufficient to show good faith.

§ 2511.4-2 Residence.

(a) *For 3-year proof.* With the exception of adjoining farm homestead entries and entries allowed under certain laws not requiring residence, a homestead entryman must establish residence upon the tract entered within 6 months after date of the entry, unless an extension of time is allowed, as explained in paragraph (c) of this section and must maintain residence there for a period of 3 years. However, he may have credit for residence as well as cultivation before the date of entry if the land was, during the period in question, subject to appropriation by him or included in an entry against which he had initiated a contest resulting afterwards in its cancellation. Moreover, he may absent himself for a portion or portions of each year after making entry and establishing residence, as more fully explained in paragraph (e)(1)(i) of this section.

(b) *For commutation proof.* (1) All original second, and additional homestead, and adjoining farm entries may be commuted, except such entries as are made under particular laws which forbid their commutation.

(2) The entryman, or his statutory successor, must show that substantially continuous residence upon the land was maintained until the submission of the proof or filing of notice of intention to submit same, the existence of a habitable house on the claim and cultivation of the area commuted to the extent required under the ordinary homestead laws, that is, cultivation of one-sixteenth of the area during the second year of the entry, and one-eighth during the third entry year and until final commutation proof. However, the proof may be accepted where actual residence on the land for the required period of 14 months is shown, even though slightly broken, provided it be in reasonably compact periods; and the failure to continue the residence until filing of notice to submit proof will not prevent its acceptance if the Bureau of Land Management be fully satisfied of entryman's good faith, and provided no contest or adverse proceedings shall have been initiated for default in residence, or other good cause, prior to filing of such notice. Credit for residence and cultivation before the date of entry may be allowed under the conditions explained in § 2511.4-3(a), as to 3-year proof.

(3) An entryman submitting commutation proof may add together, to make up the 14 months, periods of residence before and after an absence under a leave of absence regularly granted, or an absence of not exceeding 5 months of which he had given notices as provided by the act of June 6, 1912 (37 Stat. 123; 43 U.S.C. 164).

(4) A person submitting commutation proof must, in addition to certain fees pay the price of the land; this is ordinarily $1.25 per acre, but is $2.50 per acre for lands within the limits of certain railroad grants. The price of certain ceded Indian lands varies according to their location, and inquiry should be made regarding each specific tract.

(5) The claimant must show full citizenship, as in case of 3-year proof.

(6) The provisions of law explained in § 2511.4-3(b) apply to commutation proof also.

(7) Commutation proof can not be made on homestead entries allowed under the act of April 28, 1904 (33 Stat. 547; 43 U.S.C. 224), known as the Kinkaid Act; entries under the Reclamation Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 et seq.); entries under the Enlarged Homestead Act (35 Stat. 639; 43 U.S.C. 218); entries allowed on coal lands under the act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83-85), so long as the land is withdrawn or classified as coal; additional entries allowed under the act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213); second entries allowed under the act of June 5, 1900 (31 Stat. 269; 43 U.S.C. 217); second entries allowed under the act of May 22, 1902 (32 Stat. 203; 25 U.S.C. 423); when the former entry was commuted; or entries within forests under the act of June 11, 1906 (34 Stat. 233; 16 U.S.C. 506-509).

(c) *Extension of time to establish.* (1) Where, for climatic reasons, or on account of sickness, or other unavoidable cause, residence cannot be established on the land within 6 months after the date of the entry, additional time, not exceeding 6 months, may be allowed. An application for such extension must include the statements of the entryman and two witnesses acquainted with the facts. The application should set forth in detail the grounds upon which it is based, including a statement as to the probable duration of the hindering causes and the date when the claimant may reasonably expect to establish his residence.

(2) If the extension is granted, it protects the entry from contest on the ground of the homesteader's failure to establish residence within the first 6 months' period, unless it be shown that the order for extension was fraudulently obtained. But the failure of the entryman to apply for an extension of time does not forfeit his right to show, in defense of a contest, the existence of conditions which might have been made the basis for such an application.

(3) All applications must be accompanied by an application service fee of $5 which will not be returnable.

(d) *Reduction in requirements*—(1) *Authority.* The act of February 25, 1919 (40 Stat. 1153; 43 U.S.C. 231), authorizes the authorizing officer of the proper office to grant to such homesteaders as make proper showing in their applications that the climatic conditions make residence on the homestead for 7 months in each year a hardship a reduction in the terms of residence to 6 months in each year over a period of 4 years, or to 5 months in each year over a period of 5 years; but the total residence required need not exceed 25 months, but less than 5 of which shall be in each year and proof must be submitted within 5 years.

(2) *To 6 months in each year.* (i) An entryman desiring to avail himself of the privilege accorded by the act of February 25, 1919, must, within 1 year after the allowance of his entry, file in the proper office an application (preferably on the approved form) corroborated by two witnesses, setting forth the climatic conditions which would render it a hardship to reside upon the land for as much as 7 months in each year, and stating whether he wishes the requirement in his case to be fixed at 6 months' residence in 4 successive years or at 5 months' residence in 5 successive years. The statement of claimant and the witnesses need not be sworn to. If the showing is satisfactory, the authorizing officer will allow it. If it is not satisfactory, he will reject the application, subject to the usual right of appeal, and all appeals will be forwarded promptly.

(ii) If the application requests a reduction to 5 months' residence in each year, the authorizing officer may, if proper, grant partial relief; that is, fix the residence period at 6 months in each year, his decision being subject to review by the Bureau of Land Management on appeal from his decision, of which the party will be notified with all promptness.

(iii) All applications must be accompanied by an application service fee of $5 which will not be returnable.

(3) *To 5 months in each year.* (i) Where a homesteader has secured a reduction of the residence requirements to 6 months in each year, he may, at or before the termination of the second year of his entry, file application for further reduction; that is, to 5 months in each of 5 years.

(ii) All applications must be accompanied by an application service fee of $5 which will not be returnable.

(4) *Conditions warranting reduction.* To entitle a homesteader to the benefits of the act of February 25, 1919, he must show that the climatic conditions in the vicinity of the land entered are ordinarily, not in exceptional years, such as would render it a hardship for him to reside there for a greater part of each year than for 5 or for 6 months, as the case may be.

(5) *Residence each year in one continuous period.* Under this provision of the act of February 25, 1919, there is no authority to allow two absence periods, but the 5 months' residence or the 6 months' residence, as the case may be, must be in one continuous period.

(6) *Time for making proof.* (i) Proof on an entry must be made within 5 years after its allowance, notwithstanding the fact that relief may have been granted under the act of February 25, 1919, but the homesteader need not wait until the termination of his fifth residence year before submitting proof, provided he has had the last required period of residence.

(ii) An entry which is otherwise subject to commutation may be commuted, notwithstanding the granting of relief to the homesteader under this provision of law; but the periods of actual residence on the land must aggregate at least 14 months, and cultivation of not less than one-sixteenth of the area during the second year of the entry and one-eighth during the third entry year and until final commutation proof must be shown, unless a reduction has been granted in the requirements in that regard.

(7) *Credit for military service.* Credit on account of a period of military service will be allowed as on other entries, but at least 1 year's compliance with the homestead laws must be shown in every case.

(8) *Absence by settlers on unsurveyed lands.* A homestead settler on unsurveyed lands who makes the showing required by paragraphs (d)(1) to (7) of this section and who gives notice of the approximate location of the lands settled upon and claimed may be granted the benefits of the act of February 25, 1919 (40 Stat. 1153; 43 U.S.C. 231), providing for prolonged absences due to climatic conditions.

(e) *Absences*—(1) *Up to 5 months.* During each year, beginning with the date of establishment of actual residence, the entryman may absent himself from the land for not more than two periods, aggregating as much as 5 months. In order to be entitled to such absences the entryman need not file applications therefor, but must each time he leaves the land file at the proper office (by mail or otherwise) notice of the time of leaving; and upon his return to the land he must notify said office of the date thereof. If he has returned after an absence of less than 5 months and file notice of his return, he may, without any intervening residence again absent himself, pursuant to new notice, for the remaining part of 5 months within the residence year. However, two absences in different residence years, reckoned from the date when residence was established, must be separated by substantial periods if they together make up more than 5 months.

(2) *For 1 year.* (i) Leave of absence for 1 year or less may be granted by the authorizing officer of the proper office to entrymen who have established actual residence on the lands in cases where total or partial failure or destruction of crops, sickness, or other unavoidable casualty has prevented the entryman from supporting himself and those dependent on him by cultivation of the land. Application for such leave of absence must be signed by the applicant and corroborated by at least one witness in the land district or county within which the entered lands are located. It must describe the entry and show the date of establishing residence on the land and the extent and character of the improvements and cultivation performed by applicant. It must also set forth fully the facts on which the claimant bases his right to leave of absence, and where sickness is given as the reason a certificate signed by a reputable physician should be furnished if practicable. The period during which a homesteader is absent from his claim pursuant to a leave duly granted cannot be counted in his favor.

(ii) All applications for leave of absence for one year or less because of failure of crops, sickness, or other unavoidable casualty must be accompanied by an application service fee of $5 which will not be returnable.

(f) *Contest.* Where a contest is initiated against an entry, prior to filing of notice to submit commutation proof, the entry will be considered under sections 2291 and 2297, Revised Statutes, as amended (43 U.S.C. 164, 169), and the homesteader's absence will not be excused upon the ground that he has complied with the law for 14 months and is under no obligation to further reside upon the land. However, a contest for abandonment cannot be maintained if the absence after the 14 months' residence is pursuant to a leave of absence regularly and properly granted under the act of March 2, 1889 (25 Stat. 854; 43 U.S.C. 234), or under conditions which would have entitled the entryman to such leave upon formal application therefor, and such absence will not prevent the submission of acceptable commutation proof.

§ 2511.4-3 Cultivation.

(a) *For 3-year proof.* (1) Cultivation of the land in a manner reasonably calculated to produce profitable results is required for a period of at least 2 years. This must consist of actual breaking of the soil, followed by planting, sowing of seed, tillage for a crop other than native grasses, and, in areas where rainfall is inadequate, the application of such amounts of water as may reasonably be required to produce a crop. However, tilling of the land, or other appropriate treatment, for the purpose of conserving the moisture with a view of making a profitable crop the succeeding year, will be deemed cultivation within the terms of the act (without sowing of seed) where that manner of cultivation is necessary or generally followed in the locality.

(2) During the second year not less than one-sixteenth of the area entered must be actually cultivated, and during the third year, and until final proof, cultivation of not less than one-eighth must be had. These requirements are the same as to homesteads under the general law and under the enlarged homestead acts, and the years in question begin to run, not from the establishment of residence, but from the date of the entry. The required area of cultivation may be reduced, under certain conditions, as set forth in paragraph (b) of this section. Moreover, the requirements as to cultivation have been eliminated as to certain homestead claims initiated prior to February 5, 1937, as set forth in paragraphs (b)(1) to (3) of this section.

(b) *Reduction of requirements.* (1) The requirements as to cultivation may be reduced if the land entered is so hilly or rough, the soil so alkaline, compact, sandy, or swampy, or the precipitation of moisture so light as not to make cultivation of the required amounts practicable, or if the land is generally valuable only for grazing. When action is taken on an application for a reduction of the required area of cultivation, consideration will be given all the attendant facts and circumstances, and if it appears that at the date of the initiation of the claim the conditions were such as to indicate to a prudent person that cultivation of the required acreage was not reasonably practicable or that there was a lack of good faith on the part of the claimant in making the entry, the application will be subject to rejection. An application for reduction must be filed at the proper office on the form prescribed therefor, and should set forth in detail the special conditions on which the claim to a reduction is based.

(2) A reduction may be allowed also if the entryman, after making entry and establishing residence, has met with misfortune which renders him reasonably unable to cultivate the prescribed area. In this class of cases an application for reduction is not to be filed, but notice be submitted to the authorizing officer of the proper office, within 60 days after its occurrence; upon satisfactory proof regarding the misfortune at the time of submitting final proof a reduction in area of cultivation during the period of disability following the misfortune may be permitted.

(3) No reduction in area of cultivation will be permitted on account of expense in removing the standing timber from the land. If lands are so heavily timbered that the entryman cannot reasonably clear and cultivate the area prescribed by the statute, such entries will be considered speculative and not made in good faith for the purpose of obtaining a home. The foregoing applies to lands containing valuable or merchantable timber and will not preclude the reduction of area of cultivation on proper showing in cases where the presence of stumps, brush, lodge pole pine, or other valueless or nonmerchantable timber prevents the clearing and cultivation of the prescribed area.

(4) Applications for reduction in area of cultivation will be acted upon by the authorizing officer of the proper office, who may in appropriate cases defer action until final proof, but his decision in granting or refusing applications for reduction in area shall be subject to review, upon appeal, by the Director, Bureau of Land Management and by the Secretary of the Interior.

(5) All applications for reduction in area of cultivation must be accompanied by an application service fee of $5 which will not be returnable.

§ 2511.4-4 Agricultural entries of withdrawn coal lands.

The act of March 3, 1909 (35 Stat. 844; 30 U.S.C. 81) is for the protection of surface rights of nonmineral entrymen where the lands were subsequently classified, claimed, or reported as being valuable for coal, and the act of June 22, 1910 (36 Stat. 583; 30 U.S.C. 83-85), provides for the allowance of certain nonmineral entries for land having been withdrawn or classified as coal lands. These acts have separated the surface from the coal deposits for the purpose of allowance of certain nonmineral entries, and the act of June 25, 1910, was not intended to repeal said acts. Therefore, where applications are presented to make final proof on nonmineral entries made prior to withdrawal, for the purposes of classifying the coal deposits, the disposition of such applications should be made with especial reference to the provisions of the act of March 3, 1909, and as to such lands certain nonmineral entries may be allowed, as provided for by the act of June 22, 1910, notwithstanding their withdrawal under act of June 25, 1910.

§ 2511.4-5 Noncompliance.

Where the proof establishes that the entryman cannot effect timely compliance with the law, the entry must be canceled unless statutory authority permits the granting of an extension of time or other relief.

§ 2511.5 Rights of widows, heirs, or devisees.

§ 2511.5-1 On death of entryman.

(a) If a homestead entryman dies without having submitted final proof, his rights under the entry pass to his widow, or, if there be none, and the children if any are not all minors, then to his heirs or devisees. However, if all the heirs be minor children of the entryman or entrywoman, and their other parent be dead, the entry is not subject to devise. In such a case the right to a patent vests in the children at once upon proof only of the death of both parents and that they are the only children of the homesteader, provided, as to a male homesteader, that there be no widow. The law provides, in the alternative, that the executor, administrator, or guardian may, within two years after the death of the surviving parent, sell the land for the benefit of the children, in accordance with the law of the State where they are domiciled. In such cases it is required that there be furnished record evidence of an order for the sale made by a court of competent jurisdiction. In any event, publication and posting of notice of intention to submit proof or to ask issuance of patent to the purchaser is required.

(b) Persons succeeding as widow, heirs, or devises to the rights of a homestead entryman are not required to reside upon the land covered by the entry, but they must cultivate it as required by law for such period as will, added to the entryman's period of compliance with the law, aggregate the required term of 3 years. They are allowed a reasonable time after the entryman's death within which to begin cultivation, proper regard being had to the season of the year at which said death occurred. If they desire to commute the entry they must show a 14 months' period of such residence and cultivation on the part of themselves or the entryman, or both, as would have been required of him had he survived. They must in all cases show that they are citizens of the United States regardless of the question whether the entryman was himself a citizen. Moreover, the entry may not be completed by the widow, heirs, or devisee of a homestead entryman unless he himself had complied with the law in all respects to the date of his death, and they must also show, at the time of final proof, that there is a habitable house on the land.

§ 2511.5-2 Heirs of contestants.

If a contestant dies after having secured the cancellation of an entry, his right as a successful contestant to make entry passes to his heirs; and if the contestant dies before he has secured the cancelation of the entry he has contested, his heirs may continue the prosecution of his contest and make entry if they are successful in the contest. In either case, to entitle the heirs to make entry they must show that the contestant was a qualified entryman at the date of his death; and in order to earn a patent the heirs must comply with all the requirements of the law under which the entry was made, to the same extent as would have been required of the contestant had he made entry.

Subpart 2512—Additional Entries

§ 2512.1 After proof; on original claim (act of March 2, 1889).

(a) *Statutory authority.* Section 6 of the act of March 2, 1889 (25 Stat. 854; 43 U.S.C. 214), permits the entry, by a person otherwise qualified, who prior to the date of his application for additional entry has made homestead entry, submitted final proof thereon, and received the authorizing officer's final receipt for a quantity of land less than 160 acres, of so much additional land, either contiguous or noncontiguous to the land original entered by him, as shall not with it exceed a total of 160 acres.

(b) *Petitions and applications.* A person who desires to make an additional homestead entry under section 6 of the Act of March 2, 1889, must comply with the provisions of § 2511.3. In addition, he must file with the prescribed form or forms a reference to the Act of March 2, 1889, and a description, by number, section, township, and range of his original entry, together with the date of the issuance of the final receipt thereon. He is not required to show that he is still the owner or occupant of the land originally entered.

(c) *Residence, cultivation, and proof required.* Upon allowance of the additional entry, entrymen will be required within the period prescribed by the homestead laws and regulations to establish residence upon the land entered and to reside upon and cultivate the land for the period required by the homestead laws, and within the period prescribed by statute, to submit proof of such residence and cultivation as in other homestead cases.

[35 FR 9571, June 13, 1970]

§ 2512.2 For land contiguous to original entry (act of April 28, 1904, as amended).

(a) *Authority.* Section 2 of the act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213), as amended by the act of August 3, 1950 (64 Stat. 398; 43 U.S.C. 213) authorizes any person who theretofore entered, or might thereafter enter, less than 160 acres of land under the homestead laws who has not perfected the entry, or, if proof has been made, who still owns and occupies the land, to enter other and additional lying contiguous to the original entry which, with the land first entered and occupied will not in the aggregate exceed 160 acres. Section 3 of the act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213), prohibits the submission of commutation proof of an entry made under that act.

(b) *Petitions and applications.* A person who desires to make an additional homestead entry under section 2 of the act of April 28, 1904, must comply with the provisions of § 2511.3-1. In addition, he must file with the prescribed form or forms a reference to the act of April 28, 1904, and a description by number, section, township, and range of his original entry. He must also show that he owns and resides upon the land embraced in his original entry.

(c) *Final proof.* Before proof may be submitted as a basis for patent under the act of April 28, 1904, as amended, the entryman must show that he has cultivated an amount equal to one-eighth of the area of the additional entry for at least one year after the additional entry is made and until the submission of final proof thereon. The cultivation may be performed on the original entry, on the additional entry, or on both, but where it is performed on the original entry it must be shown at the time of submission of final proof on the additional entry that the entryman still owns and occupies the original entry, and the cultivation must be in addition to that required and relied upon in making final proof on the original entry. No proof of residence will be required with respect to the additional entry. The act of April 28, 1904, as amended, provides that final proof for the additional entry may be submitted only at the time of final proof for the original entry, or subsequent thereto, but it must be submitted within five years after the additional entry is made.

(d) *Cancellation of original entry.* An additional entry under the act of April 28, 1904, as amended, cannot be based on an original entry which has been canceled. If for any reason an original entry is canceled after the additional has been allowed, the additional will be canceled also.

[35 FR 9572, June 13, 1970]

Subpart 2513—Second Entries

§ 2513.0-7 Cross reference.

For enlarged homesteads see Subpart 2514.

[35 FR 9572, June 13, 1970]

§ 2513.1 Former entry lost, forfeited or abandoned (act of September 5, 1914).

(a) Where a person has made a homestead entry or entries but failed to perfect them, his right to make another homestead entry is governed by the act of September 5, 1914 (38 Stat. 712; 43 U.S.C. 182) which provides that the applicant must show to the satisfaction of the Secretary of the Interior that the prior entry or entries were made in good faith, were lost, forfeited, or abandoned because of matters beyond his control, and that he has not speculated in his right, nor committed a fraud or attempted fraud in connection with such prior entry or entries.

(b) The question whether the first entry, or entries, were made before or after the passage of the act of September 5, 1914 is entirely immaterial. Moreover, it will be seen that the act imposes upon the Bureau of Land Management the duty of passing upon the good faith of the applicant, there being no hard and fast provision, as in the act of February 3, 1911 (36 Stat. 896) limiting its benefits to a clearly defined class of persons.

(c) In order that the Bureau of Land Management may properly pass upon the right of an applicant for second entry, he must (besides filing in the proper land office an application to enter a specific tract) furnish his statement showing the following facts:

(1) Data from which his first entry (or entries) may be identified, preferably its series and number, as well as a description of the tract by section, township and range.

(2) What examination of the land and what inquiries as to its character he made prior to filing his previous application (or applications) for entry and in case of desert-land entries, what reason he had to believe that the required proportion of the tracts could be reclaimed by him through irrigation.

(3) With reference to a homestead entry, whether he established residence upon the tract, and, if so how long he lived there and what cultivation he effected; as to a desert-land entry, whether he took possession of the tract, and if so, how long he continued to exercise acts of ownership thereover.

(4) What improvements, if any, he made upon the land, describing in detail their nature and cost.

(5) The date of his abandonment of the claim and the reason therefor and whether he ever executed a relinquishment of the entry.

(6) What consideration, if any, he received for abandoning or relinquishing the entry; also whether he sold the improvements on the tract, giving full details as to said sale, if any, including the date thereof and the consideration received.

(d) The statement described in the preceding section must be signed by the applicant and must be corroborated on all matters susceptible of corroboration by at least one witness having knowledge of the facts, or there may be several witnesses, each testifying on some material point; statements of witnesses must be signed by them. Appropriate blank forms will be furnished by the authorizing officer.

[35 FR 9572, June 13, 1970]

Subpart 2514—Enlarged Homesteads

SOURCE: 35 FR 9572, June 13, 1970, unless otherwise noted.

§ 2514.0-5 Definitions.

(a) The terms "arid" or "nonirrigable" land, as used in these acts, are construed to mean land which, as a rule, lacks sufficient rainfall to produce agricultural crops without the necessity of resorting to unusual methods of cultivation, such as the system commonly known as dry farming, and for which there is no known source of water supply from which such land may be successfully irrigated at a reasonable cost.

§ 2514.0-7 Cross reference.

(a) For proofs, see Subpart 1824 of this chapter.

(b) For cultivation requirements, see §§ 2511.4-1, 2511.4-2, and 2511.4-3(b).

§ 2514.0-8 Land subject to entry.

(a) *States affected; character of land.* (1) The act of February 19, 1909 (35 Stat. 639; 43 U.S.C. 218) (extended by later legislation to additional States), and the act of June 17, 1910 (36 Stat. 531; 43 U.S.C. 219), provide for the making of homestead entries for areas of not exceeding 320 acres of public land in the States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming designated by the Secretary of the Interior as nonmineral, nontimbered, nonirrigable. As to Idaho, the act of June 17, 1910, provides that the lands must be "arid."

(2) Lands containing merchantable timber, or valuable minerals other than coal, phosphate, nitrate, potash, oil, gas, sodium, sulphur, or asphaltic minerals, and lands within a reclamation project, or lands which may be irrigated at a reasonable cost from any known source of water supply may not be entered under these acts. Entry may be allowed for the surface only of lands containing any of the minerals named. A legal subdivision will not be regarded as irrigable and excluded from designation under these acts because a minor portion of it is susceptible of irrigation unless said portion is at least one-eighth thereof. Where there is an application for additional entry after submission for final proof on the original the land covered by the original will not be regarded as irrigable, and excluded from designation, upon the ground that more than one-eighth of any subdivision is irrigable, unless said original embraces the equivalent of 20 or more acres of land in a reasonably compact body that can be thoroughly irrigated and reclaimed.

(3) A tract included in an entry under the Enlarged Homestead Acts or in any entry under the general law, and an additional entry under said acts, should be in compact form, and such claim may not be permitted to entirely surround a subdivision of unappropriated lands subject to entry under said acts.

(4) An original entry under the Enlarged Homestead Acts may not exceed one and one-half miles in extreme length (47 L.D. 370).

(b) *Initiation of settlement claims under enlarged homestead law.* Under the act of August 9, 1912 (37 Stat. 267; 43 U.S.C. 166, 223), settlement right on not exceeding 320 acres of lands designated by the Secretary of the Interior as subject to entry under the enlarged homestead law may be obtained by plainly marking the exterior boundaries of all lands claimed, whether surveyed or unsurveyed, followed by the establishment of residence, except as to lands designated under section 6 of said acts, where residence is not required, but where the settlement right is required to be initiated by plainly marking the exterior boundaries of the land claimed and the placing and maintenance of valuable improvements thereon.

§ 2514.1 Petitions and applications.

(a) A person who desires to enter public lands under the enlarged homestead laws must file an application together with a petition on forms approved by the Director, properly executed. However, if the lands have been already classified and opened to entry under the enlarged homestead laws, only an application should be filed. The documents must be filed in the proper office (see § 1821.2-1 of this chapter).

(b) Any person qualified to make an original homestead entry for 160 acres is qualified to make entry under the

Enlarged Homestead Acts for 320 acres.

(c) When a homesteader applies to make entry, he must pay a nonrefundable application service charge of $25. In addition, he must pay with his final proof, a nonrefundable service charge of $25. A successful contestant for the lands pursuant to the act of May 14, 1880 (21 Stat. 141; 43 U.S.C.), as amended, must pay, as a nonrefundable cancellation service charge, an additional $10. On all final proofs made before the authorizing officer, the claimant must pay to the authorizing officer the costs of reducing the testimony to writing, as determined by the authorizing officer. No proof can be accepted or approved until all charges have been paid.

(d) Remittances other than cash or currency are to be made payable to the Bureau of Land Management. Checks or drafts are accepted subject to collection and final payment without cost to the government.

§ 2514.2 Additional entry for contiguous lands.

(a) *Before proof on original claim.* (1) Under section 3 of the Enlarged Homestead Acts a person who has entered less than 320 acres of land which is of the character described therein, and which has been designated for entry under those acts, may make entry of adjoining lands, also so designated, which will not, together with the tract first entered, exceed 320 acres in area. Where proof has not already been submitted on the original claim at the time application for additional entry is filed, residence upon and cultivation of the tract first entered will be accepted as equivalent to residence upon and cultivation of the additional. Credit for compliance with the law as to additional entry may be allowed from the date of the filing of the application to enter.

(2) Where a person makes entry under the general provisions of the homestead laws, and before submission of proof on said entry makes an additional entry under said section 3, the following rules govern the requirements as to the cultivation and residence to be shown by him on submission of proof.

(3) He may show compliance with the requirements of the law applicable to his original entry, and that, after the date of additional entry, he cultivated, in addition to such cultivation as was relied upon and used in perfecting title to the original entry, an amount equal to one-sixteenth of the area of the additional entry for 1 year, not later than the second year of such additional entry, and one-eighth the following year and each succeeding year until proof submitted; however, the rules explained in § 2511.4-3(b) of this chapter are applicable to such cases. The cultivation in support of the additional entry may be maintained upon either entry.

(4) When proof is submitted on both entries at the same time, he may show the cultivation of an amount equal to one-sixteenth of the combined area of the two entries for 1 year, increased to one-eighth the succeeding year, and that such latter amount of cultivation has continued until offer of proof. If cultivation in these amounts can be shown, proof may be submitted without regard to the date of the additional entry, i.e., the required amount of cultivation may have been performed in whole or in part on the original entry before the additional entry was made, and proof on the additional need be deferred only until the showing indicated can be made. Such combined proof may be submitted not later than 7 years from the date of the original entry.

(b) *After proof on original claim (act of March 3, 1915).* (1) The act of March 3, 1915 (38 Stat. 956; 43 U.S.C. 218, 219), amends sections 3 and 4 of the Enlarged Homestead Acts of February 19, 1909 (35 Stat. 639; 43 U.S.C. 218), and June 17, 1910 (36 Stat. 531; 43 U.S.C. 219), so as to permit an additional entry thereunder to be made, though proof has already been submitted on the original, provided the applicant still owns and occupies the tract first entered, and it defines the residence and cultivation required in connection therewith.

(2) *Who may make additional entry; additional information required.* The act of March 3, 1915, confers the right of entry only upon one who "still owns and occupies the land" first entered; it

is not required that the claimant be residing on said tract, and the occupancy thereof may be by agent or through a tenant. It should be observed that no change has been made in the requirement of the law that the tracts be contiguous; and this would not be fulfilled by the fact that they corner on each other. Where a person desires to make an entry under the Act of March 3, 1915, he must file in addition to the form or forms required by § 2514.1(a) and (b) a statement showing continued ownership and occupancy of the land first entered, and a statement setting forth the character of the land in both tracts. These statements together with the required forms will be considered as a petition for designation under the enlarged homestead laws.

(3) *Residence.* The claimant is allowed credit for residence on the original tract and can not, in any event, be required to show residence continued for a greater period than is prescribed by section 2291 of the Revised Statutes. In other words, if the proof on the original entry has been accepted as sufficient under either the 5-year or the 3-year act, no further residence is needed; but, if the proof was by way of commutation, claimant must show such further residence, before or after the date of the additional entry, as will make up the aggregate amount required by the provisions of the act of June 6, 1912 (37 Stat. 123; 43 U.S.C. 164, 169, 218).

(4) *Cultivation.* The law regarding cultivation, with reference to additional entries made before submission of proofs on the originals, has no application to the entries allowed under the act of March 3, 1915. The claimant is required to show cultivation of the additional tract itself, to the extent and for the period required by the act of June 6, 1912, that is, one-sixteenth of its area during the second year of the entry, and one-eighth during the third and until submission of proof, which must occur within 5 years after the date of the additional entry.

§ 2514.3 Additional entries for incontiguous lands.

(a) *Acts of July 3, 1916 and Sept. 5, 1916.* Under section 7 of the Enlarged Homestead Acts, added thereto by the act of July 3, 1916 (39 Stat. 344; 43 U.S.C. 218), and the act of September 5, 1916, (39 Stat. 724; 43 U.S.C. 219), a person who has submitted final proof on a homestead entry for less than 320 acres of land of the character contemplated by said acts, has the right to enter sufficient land of similar character, not contiguous to his first entry, to make up therewith not more than 320 acres. He is required to have the same residence and cultivation and a habitable house on the additional entry as though it were an original filing, except where the second tract is within 20 miles of the first, in which case residence and a habitable house on either tract will be accepted.

(b) *20 Mile Limitation.* A qualified person who owns and continues to reside on his original entry may make entry for two or more incontiguous tracts within 20 miles of his original entry, if unable to secure in one tract the entire area he is entitled to enter; but one who no longer owns his original entry, or who seeks land not within 20 miles therefrom, can not be allowed to enter incontiguous tracts under this act.

(c) *Conditions under which additional entry may be made.* Section 7 of the Enlarged Homestead Acts has no application unless the first entry was made in one of the States where the Enlarged Homestead Act is in force, and the additional entry can not be allowed until both tracts shall have been designated thereunder. However, in considering allowance of the entry it is not material whether the applicant owns or occupies the original tract. A person whose two incontiguous entries do not make up 320 acres, who has submitted proof on the first and occupies his unperfected second claim, may amend the latter by adding land contiguous thereto, so as to aggregate that area, subject to the requirements of this act respecting residence and cultivation. Also the benefits of this act may be claimed by a person who has made and perfected more than one homestead entry, but the aggregate area of the land thus acquired with that applied for is limited to 320 acres.

(d) *Qualifications required of applicant.* The only qualifications required of an applicant under section 7 of the Enlarged Homestead Acts are that he has not already made an additional entry thereunder, and that the tract applied for will not, with other lands which he has entered and acquired title to under any of the nonmineral public land laws, or which he is then claiming thereunder, make an aggregate of more than 480 acres.

(e) *Designation and classification of original and additional tracts.* It is not necessary that any of the land be designated under the Enlarged Homestead Act when the application for additional entry is filed. The applicant must state that both tracts have been so designated, or he must file petition for classification of the undesignated tract and separate petitions must be filed for the different tracts if both be undesignated or not classified.

(f) *Showing required for proof.* (1) There must be shown in proof on the entry the usual residence and cultivation and the existence of a habitable house upon the land entered, exception to these rules being made only where said tract is within 20 miles of that embraced in the original entry and the entryman is residing on the latter. In that event the homesteader need not reside on the additional entry nor have a habitable house thereon, if he owns and resides upon the original tract when applying for said entry, and continues both ownership and residence until submission of proof.

(2) In the proof, to be submitted within 5 years after the date of additional entry, there must be shown residence on the additional tract, or on the original, if permitted under the 20-mile exception above explained, for not less than 3 years, subject to the privilege of being absent 5 months in each year, as provided by the 3-year homestead law; also cultivation of not less than one-sixteenth of the additional tract during the second year after the date of the entry, and of not less than one-eighth of its area during the third year and until submission of proof; but residence and cultivation for the requisite period after the date of the application and until the submission of proof will be accepted. Credit for military service will be allowed as in other cases.

(g) *Showing required in petition for designation.* (1) As in other cases, a petition for designation, filed in connection with an entry under section 7 of the Enlarged Homestead Acts, must consist of a statement, signed in duplicate by the applicant and at least two witnesses, setting forth a description by legal subdivisions of all the land involved, its character, and the conditions governing the irrigability of both tracts.

(2) If any part or parts thereof are irrigated, their location, area, source of water supply, and other pertinent facts should be stated. If any part or parts thereof are under constructed or proposed irrigation ditches or canals, or adjacent thereto, the relation of the lands to same and the reasons for applicant's belief that the lands are not irrigable therefrom should be explained. The relation of the tract to surface streams or springs rising on or flowing across them or in their vicinity should be indicated. If such sources of water supply are inadequate for the irrigation of the applicant's lands, or are not available to him, full particulars should be given. The location and depth of wells, elevation of water plane relative to the surface, and other pertinent facts which will disclose the quantity and quality of the water supply, obtainable from either ordinary or artesian wells on the land should be given. If there are no wells thereon such information should be furnished as to any other wells in that vicinity, and the possibility of irrigating the tract involved from underground sources should be fully discussed. If any attempts have been made to irrigate and reclaim the tract, or if it has been included in a desert-land entry, the reasons for lack of success should be stated. The petition should be supplemented by a map or diagram in cases where the acts may be advantageously presented hereby.

(h) *Entries under section 6 of Enlarged Homestead Act.* The provisions of the acts of July 3 and September 5, 1916, do not apply to entries under section 6 of the Enlarged Homestead Act.

§ 2514.4 Additional entry for double the area of the additional rights.

(a) *Act of February 20, 1917.* The act of February 20, 1917 (39 Stat. 925; 43 U.S.C. 215), permits a person who has perfected a homestead entry for less than 160 acres and is entitled to an additional entry for sufficient land to make that area, to enter under the Enlarged Homestead Act a tract designated thereunder of an amount double that which he would be entitled to appropriate of land not so designated.

(b) *Designation required of additional tract.* The act of February 20, 1917, permits an additional entry under the Enlarged Homestead Act to be made for a tract designated as subject thereto, although the land included in the applicant's perfected entry be not thus designated; it is immaterial whether he owns the original tract, and the additional tract may be contiguous thereto or at any distance therefrom.

(c) *Description required of all former entries.* The application must contain a description of all entries theretofore made by the applicant or such data as will serve to identify them.

(d) *Area of additional right.* Under section 6 of the act of March 2, 1889 (25 Stat. 854; 43 U.S.C. 214), a person who has partially exhausted his homestead right through a perfected entry is entitled to make an additional entry for so much land as will with the area of the completed entry make 160 acres. The act of February 20, 1917, supplements that legislation by providing that the additional land, if designated under the Enlarged Homestead Act, shall be estimated at only one-half its actual area in the calculation under the act of March 2, 1889. To illustrate: If the person has obtained title to 40 acres, he may make additional entry for not exceeding 240 acres of enlarged homestead land, that is, twice 120; if he has had 80 acres, he may still take 160 acres of such land; if he has had 120 acres, he may now take an additional 80 acres.

(e) *Petition for classification.* In connection with an application pursuant to the provisions of the act of February 20, 1917, a petition for classification of the land sought may be filed as provided in other cases of applications under the Enlarged Homestead Act, and the proceedings with relation to the application and petition will be as in other cases.

(f) *Right to additional area, when application cannot be allowed under section 3 or 7 of Enlarged Homestead Act.* Where an application is filed for additional entry under either section 3 or section 7 of the Enlarged Homestead Act, and the Secretary of the Interior or other authorized officer refuses to designate thereunder the tract included in the original perfected entry, the application may be allowed for so much of the land sought as the claimant is entitled to enter under the act of February 20, 1917, provided said land be designated as subject to the Enlarged Homestead Act.

(g) *Showing required for proof.* In proof on an entry allowed pursuant to the provisions of the act of February 20, 1917, there must be shown the existence of a habitable house upon the land entered and the usual residence and cultivation. Residence must be for not less than 3 years, subject to the privilege of being absent 5 months in each year, in two periods if desired. There must be cultivation of not less than one-sixteenth of the land entered during the second year after the date of the entry, and not less than one-eighth of its area during the third year and until submission of proof. However, credit for military service will be allowed as in other cases. Proof must be submitted within 5 years after the date of the entry.

§ 2514.5 Nonresidence homesteads.

(a) *In Utah.* (1) The sixth section of the act of February 19, 1909 (35 Stat. 640; 43 U.S.C. 218), provides that not exceeding 2,000,000 acres of land in the State of Utah, which do not have upon them sufficient water suitable for domestic purposes as would make continuous residence upon such lands possible, may be designated by the Secretary of the Interior as subject to entry under the provisions of that act; with the exception, however, that entrymen of such lands need not reside thereon. This act provides in such cases that all entrymen must reside within such distance of the land entered as will enable them successfully to farm the same as required by the act.

(2) During the second year of the entry at least one-eighth of the area must be cultivated, and during the third, fourth, and fifth years, and until submission of final proof, one-fourth of the area entered must be cultivated. This requirement is made by the act of June 6, 1912 (37 Stat. 123; 43 U.S.C. 218). Proof may be submitted on entries of this class within 7 years after their dates.

(3) The rules relating to petitions for designation of lands apply to section 6 of the enlarged Homestead Act.

(b) *In Idaho.* The sixth section of the act of June 17, 1910 (36 Stat. 531, as amended by the act of August 10, 1917 (40 Stat. 275; 43 U.S.C. 219), provides that 1,000,000 acres of land in the State of Idaho which do not have upon them sufficient water suitable for domestic purposes as would make continuous residence upon them possible, may be designated by the Secretary as subject to entry thereunder, without the necessity of residence upon such lands, by the entryman. One-sixteenth of the cultivatable area of the entry must be cultivated during the first year of the entry, one-eighth of the area during the second year, and one-fourth of the area during the third and each succeeding year. Under the act as amended it is required that "after six months from the date of entry and until final proof the entryman shall be a resident of the State of Idaho."

Subpart 2515—Reclamation Homesteads

SOURCE: 35 FR 9575, June 13, 1970, unless otherwise noted.

§ 2515.0-3 Authority.

(a) *Effect of reclamation withdrawals.* Lands withdrawn as susceptible of irrigation are open to settlement or entry only when approved farm-unit plats have been filed and water is ready to be delivered to the land in said farm units or some part thereof and such fact has been announced by an authorized officer, except as provided by the act of February 18, 1911 (36 Stat. 917), as amended by section 10 of the act of August 13, 1914 (28 Stat. 689; 43 U.S.C. 436, 437).

(b) Entries are permitted under the act of February 18, 1911, as amended by section 10 of the act of August 13, 1914 (38 Stat. 689; 43 U.S.C. 436, 437), upon the relinquishment of an entry made prior to June 25, 1910, and the right to enter such land is not limited to one or more entries or entrymen.) Lena Hektner, 42 L.D. 462.) This act has no application where the cancellation of the entry made prior to June 25, 1910, was the result of a contest or of a relinquishment resulting from the same. (Fred V. Hook, 41 L.D. 67.) The act is also inapplicable in the case of lands withdrawn under the first form and has reference only to lands covered by second-form withdrawals. (Annie G. Parker, 40 L.D. 406.)

§ 2515.0-7 Cross reference.

(a) For lands in State irrigation districts, see Subpart 2783 of this chapter.

(b) For regulations relating to the payment of water-right charges, see § 2515.7(d)(1) and § 2524.8.

(c) For cultivation requirements of the homestead laws, see §§ 2511.4-2(b), and 2511.4-3(b) of this chapter.

§ 2515.1 Applications.

No application to make homestead entry of lands within a reclamation project and covered by public notice will be received unless accompanied by such certificate of the official in charge. Where under the reclamation law lands within the reclamation project are subject to entry notwithstanding public notice covering said lands has not yet been issued, such certificate of the official in charge is not required, and in such cases the application, if otherwise regular, will be received and entry allowed. The authorizing officer will immediately notify the official in charge of each entry allowed, stating whether the entry was allowed with or without the certificate of the official in charge above referred to.

§ 2515.2 Entry.

(a) *Homestead entries in reclamation projects.* Homestead entries of lands platted to farm units and covered by public notice are made practically in the same manner as the ordinary homestead entry and authorizing officers will allow homestead applications for such lands, if found regular, and accompanied by a certificate of the official in charge of the project showing that water-right application has been filed and the proper water-right charges deposited and that the applicant has qualified under Subsection C of section 4 of the act of December 5, 1924 (43 Stat. 702; 43 U.S.C. 433).

(b) *Contests*—(1) *Rights of successful contestants.* An entry embracing lands included within a first- or second-form reclamation withdrawal, whether such entry was made before or after the date of such withdrawal, may be contested and canceled because of entryman's failure to comply with the law or for any other sufficient reason, except that for failure to pay for construction charges or charges for operation and maintenance no contest will lie, and any contestant who secures the cancellation of such entry and pays the fees occasioned by his contest will be awarded a preferred right of making entry. Should the land embraced in the contested entry be within a reclamation withdrawal at time of successful termination of the contest, the preferred right may prove futile, for it cannot be exercised as long as the land remains so withdrawn, but should the lands involved be restored to the public domain or a farm-unit plat be approved for the lands and announcement made that water is ready to be delivered, the preference right may be exercised at any time within 30 days from notice of the restoration or the establishment of farm units. It should be the duty, however, of such contestant to keep the authorizing officer advised respecting his residence to which notice may be sent him of his preference right of entry in event of successful contest, when the land is subject to entry, and a notice mailed to his address, shown by the records of the proper office at the time of the mailing of the notice of preference right, will be held to meet the requirements of the act of May 14, 1880 (21 Stat. 140; 43 U.S.C. 185). No contest can be allowed, however, against any qualified entryman who prior to June 25, 1910, made bona fide entry upon lands proposed to be irrigated and who established residence in good faith upon the lands entered by him for failure to maintain residence or to make improvements upon his land prior to the time when water is available for its irrigation.

(2) *When contests are allowable.* Under the regulations in paragraph (b)(1) of this section and in this paragraph, the filing of contests will be allowed against homestead entries made subject to the reclamation law in the following cases:

(i) Where the entry was made on or after June 25, 1910.

(ii) Where the entry was made prior to June 25, 1910, and it is alleged that the entryman failed to establish residence in good faith upon the lands entered by him.

(iii) Where the entry was made prior to June 25, 1910, and a period of 90 days has elapsed since the issuance of public notice under section 4 of the Reclamation Act of June 17, 1902 (32 Stat. 389; 43 U.S.C. 419), fixing the date when water will be available for irrigation of the land.

(iv) Where the entry was made prior to June 25, 1910, for any causes other than "failure to maintain residence or make improvements upon the land prior to the time when water is available."

(c) *Exchanges*—(1) *Applications for exchange.* The act of March 4, 1915 (38 Stat. 1215; 43 U.S.C. 447), provides for the exchange of lands included in pending entries, for other lands in the same project, under certain conditions. Applications to make new entry under the provisions of this act must be on the form provided for homestead applications, must refer to the serial number and give the description of the former entry, and must be accompanied by a relinquishment of the former entry and a statement by the applicant showing the facts upon which he claims to be entitled to the provisions of this act.

(2) *Conditions permitting exchange; act of March 4, 1915.* The act of March 4, 1915, permits a new entry only

where the former entry was made subject to the provisions of the act of June 17, 1902 (32 Stat. 388), for land which was believed to be susceptible of irrigation, where it has since been determined that the land embraced in such entry or all thereof in excess of 20 acres is not or will not be irrigable under the project. This act permits the new entry to be made only within the same project as the former entry, nor may any land be entered under this act until such land has been designated as a farm unit. Any such farm unit entered under this act will be subject to conformation to a new farm unit, in the discretion of the Department, and will be subject to all the charges, terms, conditions, and limitations of the act of June 17, 1902 (32 Stat. 388), and acts supplemental thereto and amendatory thereof.

(3) *Conditions permitting exchange; other acts.* Other exchanges within reclamation projects under certain conditions, have been authorized, as indicated below:

(i) The act of August 13, 1953 (67 Stat. 566; 43 U.S.C. secs. 451-451k), provides for the exchange of certain unpatented farm units or private lands on a Federal irrigation project, for farm units available on the same or any other such project, and the amendment of farm units by the addition of contiguous or noncontiguous land on the same project. For the regulations under this act see Part 406, Chapter II, of this title.

(ii) Section 44 of the act of May 25, 1926 (44 Stat. 648; 43 U.S.C. 423c) authorizes exchanges of unpatented entries and private lands for other public lands within the same project or any other Federal reclamation project.

(iii) Departmental orders of May 10, 1922 and July 31, 1924, permit the exchange of unpatented and patented land and water-right entries under the act of January 25, 1917 (39 Stat. 868) in Part One, Mesa Division, Yuma Irrigation Project, Arizona.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2515.3 Loans.

(a) *Mortgage loans on existing reclamation homestead entries.* (1) A reclamation homestead entryman or a recognized assignee thereof desiring a loan on an existing reclamation homestead entry under the act of October 19, 1949 (63 Stat. 883, 7 U.S.C., Supp. III secs. 1006a, 1006b), should consult the Farmers Home Corporation of the Department of Agriculture and the Bureau of Reclamation of the Department of the Interior.

(2) Where a reclamation homestead entry subject to a mortgage loan is canceled or relinquished and the loan has not been satisfied, a lien held by the United States acting through the Secretary of Agriculture would attach to the land under the act of October 19, 1949, and such land would be subject to reclamation homestead entry for a period of one year from the date the canceled entry was closed or for one year from the date the entry was relinquished. An applicant for such land should first consult the Farmers Home Corporation and the Bureau of Reclamation. Such a reclamation homestead application must not be filed in the land office until the applicant has been selected by the Farmers Home Corporation and the Bureau of Reclamation, and he has been directed by the Farmers Home Corporation to file the application.

(3) The final arrangements of a mortgage loan between the homestead applicant and the Farmers Home Corporation are not completed until after the reclamation homestead application has been allowed as an entry. Upon the allowance of such an application the entryman will be notified not to occupy the land until he has completed arrangements of the loan and he has been instructed to occupy the land by the Farmers Home Corporation.

(4) Decisions canceling reclamation homestead entries subject to such mortgage liens for defaults on the mortgage or for noncompliance with the reclamation or homestead laws will contain a clause allowing 15 days from receipt of notice of the decision within which to respond or to appeal.

(5) If the land in a relinquished or canceled reclamation homestead entry subject to a mortgage lien is not entered during the period of one year from the date of relinquishment or one year from the date the canceled

reclamation homestead entry was closed, the land will become subject to disposition by the Secretary of Agriculture.

(b) *Mortgage liens.* A mortgage lien held by the United States acting through the Secretary of Agriculture shall not extend to mineral deposits in the lands, which have been or may be reserved to the United States pursuant to law.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2515.4 Leave of absence.

(a) *Showing required.* (1) Applications for leave of absence should be duly corroborated by two witnesses, contain a specific description of the land, show the good faith of the applicant, and set forth in detail the character, the extent, and the approximate value of the improvements placed on the lands, which must be such as to satisfy the requirements of the law that the entryman has made substantial improvements, and the applicant must show, as a matter of fact, that water is not available for the irrigation thereof. The statement regarding the availability of water for irrigation must be corroborated by certificate of the official in charge of the project, to be filed with the application for leave.

(2) All applications for leave of absence within Federal irrigation projects under the act of June 25, 1910, must be accompanied by an application service fee of $5 which will not be returnable.

(b) *Period of leave.* When sufficient showing is made in cases coming within the provisions of the law, leave of absence will be granted until such time as water for irrigation is turned into the main irrigation canals from which the land is to be irrigated or, in the event that the project is abandoned by the Government, until the date of notice of such abandonment and the restoration to the public domain of the lands embraced in the entry.

(c) *Effect of granting leave.* Attention is directed to the provision that "the period of actual absence shall not be deducted from the full time of residence required by law." The effect of the granting of leave of absence under this act is to protect the entry from contest for abandonment, and by the necessary implication of the act the period within which the entryman is required to submit final proof will be extended and the entry will not be subject to cancellation for failure to submit proof until the expiration of the period allowed in which to submit final proof, exclusive of the period for which leave of absence may be granted. Under the provisions of the act of April 30, 1912 (37 Stat. 105; 43 U.S.C. 445), no qualified entryman for lands within a reclamation project whose entry was made prior to June 25, 1910, and who established residence in good faith upon the lands so entered shall be subject to contest for failure to maintain residence or make improvements upon his land prior to the time public notice is issued fixing the water-right charges and announcing that water is available for the irrigation of the land embraced in his entry. Within 90 days after the issuance of public notice under section 4 of the act of June 17, 1902 (32 Stat. 389; 43 U.S.C. 419), fixing the water-right charges and announcing the date when water will be available for irrigation, the entryman must file water-right application for the irrigable land in his entry in conformity with the public notice and farm-unit plate, and must file in the proper office a statement showing that he has reestablished his residence on the land with the intention of maintaining the same for a period sufficient to enable him to make final proof.

(Sec. 10, 82 Stat. 390, as amended; 48 U.S.C. 378)

§ 2515.5 Assignments, mortgages.

(a) *Assignments—*(1) *When assignments may be made.* The act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), authorizes persons who have made or may make homestead entries subject to the reclamation law to assign their entries in whole or in part at any time after filing in the proper office satisfactory proof of the residence, improvements, and cultivation required by the ordinary provisions of the homestead law.

(2) *Farm units.* (i) In cases where the entry involves all or parts of two or more farm units, the entryman may file an election as to which farm unit he will retain and he may assign and transfer to a qualified assignee any farm unit or units or parts of such units which he does not elect to retain. If an election by the entryman to conform to a farm unit be filed and no assignment made of the remainder of the entry, the entry will be conformed to the farm unit selected for retention and canceled as to the remainder.

(ii) Where it is desired to assign a part of an established farm unit, and application for the amendment and subdivision of such unit must be filed with the official in charge of the project, together with the showing required by paragraph (a)(4) of this section. If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit, or the division of the irrigable area, a deposit equal to the estimated cost of such survey must be made with the agent cashier, Bureau of Reclamation, on the project by or on behalf of the parties concerned. Any excess over the actual cost will be returned to the depositor or depositors after completion of the survey, and they will also be required to make good any deficiency in their deposit.

(3) *Limitations and conditions.* (i) The law expressly makes assignments "subject to the limitations, charges, terms, and conditions of the Reclamation Act," which, among other things, limits the right of entry to one farm unit, and forbids the holding of more than one farm unit prior to payment of all construction or building and betterment charges.

(ii) Assignments must be an absolute sale, divesting the assignor of all interest in the premises assigned. Assignments may be effected by quitclaim or warranty deed or by any other form of conveyance in general use in the State in which the land is located, but a quitclaim or warranty deed is preferred.

(iii) Assignees must be more than 21 years of age and must not own, hold, or claim any other farm unit or entry under the reclamation law or one or more parcels of private land up to the limit of single ownership fixed for the project receiving water from the project system upon which all installments of construction or building or betterment charges have not been paid in full. If the assignee is a married woman, she must purchase the assignment with her own separate money, in which her husband has no interest or claim (39 L.D. 504 and 43 L.D. 364). If the assignment involves a partial farm unit which an entryman does not elect to retain in accordance with paragraph (a)(2)(i) of this section the assignee must also have an entry or an assignment covering the remainder of such unit.

(4) *Showing required.* Whenever assignments are presented to the proper office in accordance with paragraph (a)(5) of this section they must be accompanied by the following:

(i) A showing that the assignment and the assignee meet the requirements of paragraph (a)(3) of this section.

(ii) The original instrument of assignment, or where the instrument is recorded, a copy thereof certified by the officer who has custody of the record, or where the original instrument of assignment is presented to an officer having an official impression seal, a copy of the instrument certified by such officer if accompanied by satisfactory evidence of compliance with the documentary stamp tax provisions of the Internal revenue law.

(iii) A certificate by the official in charge of the project that water-right application therefor is not receivable or that the assignee has filed in the project office for acceptance a water-right application in due form for the land embraced in the assignment.

(iv) Where not all the predecessors in interest to an assignee have had their assignments approved by the proper office, such assignee, in addition to the showing required by paragraphs (a)(4)(i), (ii) and (iii) of this section, must submit satisfactory evidence of title to the land consisting of either the recorded deed or deeds in the chain of title from the original entryman, an abstract of title, or a certificate of title issued by a qualified title company which is acceptable to the Department of the Interior.

(v) A service fee of $5 which will not be returnable.

(5) *When showing is required.* The showing required by paragraph (a)(4) of this section is required whenever an assignment is presented to the proper office for filing. All assignments should be presented for filing. They must be presented, however, when:

(i) The assignments involve, under paragraph (a)(2)(i) of this section all or part of farm units which an entryman does not elect to retain, or under paragraph (a)(2)(ii) of this section, parts of established farm units.

(ii) The assignee desires to make proof of full compliance with the reclamation law with the view of receiving patent for the land.

(6) *Requirements for patent.* Upon the approval of an assignment, the assignee will become entitled to a patent upon payment of the water-right charges and submittal of satisfactory proof of reclamation as would have been required of the original entryman, and after proof of compliance with the law.

(b) *Mortgages*—(1) *Notice of interest by mortgagees.* (i) Mortgages of lands embraced in homestead or desert-land entries within reclamation projects may file in the proper office for the district in which the land is located a notice of such mortgage interest, and shall thereupon become entitled to receive and be given the same notice of any contest or other proceedings thereafter had affecting the entry as is required to be given the entryman in connection with such proceedings, and a like notice of mortgage interest may be filed with the official in charge of the project in case of any lands, whether or not water-right application has been filed under the provisions of the act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 et seq.), including homestead entries, desert-land entries, and lands in private ownership; and thereupon the mortgagee shall receive copies of all notices of default in payment of the water-right charges levied by an authorized officer against such lands and shall be permitted to make payment of the amount so in default within 60 days from the date of such notice. Any payment so made shall be credited on the charges levied against such lands.

(ii) All notices of mortgage interest on homestead or desert land entries filed in accordance with this section must be accompanied by a service charge of $5 which will not be returnable.

(2) *Notation of mortgage interest; effect of notation.* Every such notice of mortgage interest filed as provided in the preceding section must be forthwith noted upon the records of the official in charge of the project and of the proper office, and be promptly reported to the Commissioner of the Bureau of Reclamation, where like notations will be made. Relinquishment of a homestead or desert-land entry or part thereof, within a reclamation project, upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted unless the mortgagee joins therein; nor will an assignment of such a homestead entry or part thereof under the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), nor an assignment of a mortgaged desert-land entry where the records show the land to have been mortgaged, be recognized or permitted unless the assignment specifically refers to such mortgage and is made and accepted subject thereto.

(3) *Rights of mortgagee purchaser at foreclosure sale.* If such mortgagee buys in the lands at foreclosure sale, such mortgagee-purchaser, whether a nonresident or corporation, may, at any time within 1 year after the end of the statutory period of redemption, if there be such statutory period, and if not, at any time within 1 year after such foreclosure sale, make proof of cultivation and reclamation of the land under section 1 of the act of August 9, 1912 (37 Stat. 265; 43 U.S.C. 541), and receive final water-right certificate, provided such mortgagee-purchaser is otherwise qualified so to do. Water will be furnished said land, and no steps will be taken to cancel the water-right application on account of the holdings by the same mortgagee-purchaser of lands in excess of 160 acres, or the limit per single ownership of private land as fixed by an authorized officer for which a water right

may be purchased, until 2 years after such foreclosure purchase, provided that all charges in connection with the water-right application that may be due at the time of the foreclosure sale and all such charges that may become due during the period when the land is held under the terms hereof shall be promptly paid by or on behalf of such mortgagee-purchaser. To secure the benefits hereof the mortgagee purchasing the land at foreclosure sale must give notice thereof to the authorizing officer of the proper office and to the officer in charge of the project within 60 days after such purchase.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2515.6 Rights of widows and heirs of entryman.

(a) *Completion of entries.* The widows or heirs of persons who make entries under the reclamation law will not be required both to reside upon and cultivate the lands covered by the entries of the persons from whom they inherit, but they must reclaim the land as required by the reclamation law, and make payment of all unpaid charges when due.

(b) *Minor heirs.* Upon the death of a homesteader having an entry within an irrigation project, leaving no widow and only minor heirs, his right may, under section 2292, Revised Statutes (43 U.S.C. 171), be sold for the benefit of such heirs. (See Heirs of Frederick C. DeLong, 36 L.D. 332.) If in such case the land has been divided into farm units, the purchaser takes title to the particular unit to which the entry has been limited, but if subdivision has not been made he will be required to conform the entry to one farm unit in the same manner as an original entryman by amending the former entry, relinquishing to the United States or assigning to a duly qualified assignee the lands embraced in the entry in excess of the farm unit he elects to retain. The purchaser and his assignees take, subject to the payment of the water-right charges authorized by the reclamation law and regulations thereunder, and must reclaim the land as required by said law, but are not required otherwise to comply with the homestead law. Should the land not be sold for the benefit of the minor heirs, but retained by them, they will be required to show compliance with the requirements of law as to reclamation and payment of the charges.

(Sec. 10, 32 Stat. 390, as amended; 43 U.S.C. 378)

§ 2515.7 Final proof; final certificates; patents.

(a) *Requirements for issuance.* (1) The act of August 9, 1912 (37 Stat. 265; 43 U.S.C. 541), expressly requires reclamation of one-half of the irrigable area of the entry as finally adjusted before final certificate and patents may issue thereunder, and, therefore, the act does not authorize the issuance of final certificate on homestead entries made subject to the reclamation law, prior to the establishment by an authorized officer of farm units, and the conformation of the entry to an approved unit, for the reason that prior to that time the entry is still subject to adjustment in area, and it can not be determined what area must be ultimately reclaimed under the provisions of the act.

(2) The act of Congress of February 15, 1917 (39 Stat. 920; 43 U.S.C. 541) amends the proviso to section 1 of the act of August 9, 1912 (37 Stat. 265), to read as follows:

> *Provided,* That no such patent or final water-right certificate shall issue until after the payment of all sums due the United States on account of such land or water right at the time of the submission of proof entitling the homestead or desert-land entryman to such patent or the purchaser to such final water-right certificate.

(3) Under the provisions of this act patents may issue on reclamation entries where all water-right charges due at the time the entryman submits proof of reclamation of one-half of the irrigable area of the land embraced in his entry have been paid, regardless of the fact that other water-right charges may accrue and be unpaid prior to the issuance of patent.

(4) All persons who make entry of lands within the irrigable area of any project commenced or contemplated under the reclamation law will be required to comply fully with the home-

stead law as to residence, cultivation, and improvement of the lands, except that where entries were made prior to the issuance of public notice announcing the availability of water for the irrigation of the land and prior to June 25, 1910, in which case, under the departmental decision in the case of ex parte H. Haynes (40 L.D. 291), and under the provisions of the act of April 30, 1912 (37 Stat. 105; 43 U.S.C. 445), the submission of final proof is not required within the period during which proof must be submitted under the ordinary provisions of the homestead law.

(b) *Commutation not allowed; conformation to farm units.* Reclamation entries are not subject to the commutation provisions of the homestead law, and on the determination by an authorized officer of the Department of the Interior that the proposed irrigation project is practicable, the entries made prior to June 25, 1910, and not conforming to an established farm unit may be reduced in area to the limit representing the acreage which, in the opinion of the authorized officer, may be reasonably required for the support of a family upon the lands in question, and the lands within a project are platted to farm units representing such areas.

(c) *Credit for military or naval service.* Soldiers and sailors and other persons entitled to claim credit for military or naval service, as stated in Subpart 2096 of this chapter will be allowed to claim such credit in connection with entries made under the reclamation law, but will not be entitled to receive final certificate or patent until the water-right charges due have been paid and the requirements as to reclamation have been met.

(d) *Reclamation required.* (1) All homestead and desert-land entrymen holding land under the reclamation law must, in addition to paying the water-right charges, reclaim the land as required by the reclamation law. Homestead entrymen must reside upon, cultivate, and improve the lands embraced in their entries for not less than the period required by the homestead laws. Desert-land entrymen must comply with the provisions of the desert-land laws as amended by the reclamation law. Failure to make payment of any water-right charges due for more than 1 year, will render the entry subject to cancellation and the money paid subject to forefeiture, whether water-right application has been made or not.

(2) Homesteaders who have resided on, cultivated, and improved their lands for the time required by the homestead law and have submitted proof which has been found satisfactory but who are unable to furnish proof of reclamation because water has not been furnished to the lands or farm units have not been established, will be excused from further residence on their lands and will be given a notice reciting that further residence is not required, but that final certificate and patent will not issue until proof of reclamation of one-half of the irrigable area of the entry, as finally adjusted to an approved farm unit, and payment of all charges due under the public notices and orders issued in pursuance of the reclamation law.

(e) *Requirements of reclamation proof.* Homestead and desert-land entrymen, in making proof of compliance with the reclamation law as to reclamation and payment of reclamation charges due, must submit such proof, duly corroborated by two witnesses, in duplicate, to the official in charge of the project showing these facts. Thereupon it shall be the duty of the official in charge to verify the statement as to payment and also make such examination of the land as will enable him to determine whether reclamation as required by law and the regulations has been made. If he finds that the statement as to payment be correct he will so certify, which certificate will also show the date on which the next payment is due; but if he finds that all payments have not been made as required he will advise the entryman thereof, requiring him to pay the amounts found to be unpaid and due, with a right of appeal in the entryman from such requirement to the Commissioner of the Bureau of Reclamation and ultimately to the Secretary of the Interior. Should he find that reclamation has been accomplished he will so certify, but if he finds that reclamation has not yet been accomplished as required he will forward the proofs to the authorizing officer of the proper office for the district in which the land is situated, with his report or findings thereon, for appropriate action. If the proof be rejected by the authorizing officer, appeal will lie to the Director, Bureau of Land Management, as in other cases provided, it being the purpose to issue final certificate upon any such entry only after a final determination that all water charges due on account thereof have been paid and that reclamation has been accomplished as required by the reclamation law. Where prior to issuance of public notice water has been furnished on a water-rental basis to reclamation entrymen or others, and by means whereof reclamation sufficient to obtain patent or water-right certificate under the act of August 9, 1912 (37 Stat. 265; 43 U.S.C. 541), has been accomplished and satisfactory proof made, water-right applications may be received from such entrymen or others desiring to obtain patent or water-right certificate under that act upon the form of application approved by the Department, modified so as to refer to the irrigable acreage and the charge per acre as thereafter announced by an authorized officer. In such cases reclamation homestead entries must be conformed to farm units as established by an authorized officer. If not theretofore created, farm units may be established upon application.

(f) *Certifications by superintendents or other officers of irrigation districts and water users' associations.* (1) On a reclamation project (other than the Salt River Valley Project) or part thereof operated and maintained by an irrigation district or water users' association, the certifications as to the cultivation of, reclamation of, and payments from lands within the boundaries of the irrigation district or within the general territory of the water users' association may be made by the superintendent or other appropriate officers of the district or association, under the seal of the district or association, and when so made will be accepted and given the same force and effect as certifications made by a Government project superintendent: *Provided, however,* That when the certificate relates to payments made by the entryman, and the district or association is delinquent in the payment of charges due from the district or association to the United States, the certificate shall show that the Government charges paid by the entryman to the district or association were paid over to the Government by or on behalf of the district or association.

(g) *What constitutes reclamation and cultivation.* To comply with the provisions of the reclamation law as to reclamation and cultivation, the land must be cleared of brush, trees, and other encumbrances, provided with sufficient laterals for its effective irrigation, graded and otherwise put in proper condition for irrigation and crop growth, planted, watered, and cultivated, and during at least 2 years next preceding the date of approval by the official in charge of the project of proof of reclamation, except as prevented by hailstorm or flooding, satisfactory crops must be grown on at least one-half of the irrigable area thereof. A satisfactory crop during any year shall be any one of the following:

(1) A crop of annuals producing a yield of at least one-half of the average yield on similar land under similar conditions on the project for the year in which it is grown;

(2) A substantial stand of alfalfa, clover, or of other perennial grass substantially equal in value to alfalfa or clover; or

(3) A season's growth of orchard trees or vines of which 75 percent shall be in a thrifty condition. The crop production requirements of this section affecting lands embraced in reclamation homestead entries made after January 1, 1949, must be performed and met by the entryman personally, by members of his immediate family residing with him, or by persons employed under his direction, supervision, and management. The crop production requirements of this section shall be applicable to entryman's successors in interest.

(h) *Time for reclaiming certain lands.* As to all lands subject to the Reclamation Extension Act of August

13, 1914 (38 Stat. 686; 43 U.S.C. 440), at least one-quarter of the irrigable area thereof shall be so reclaimed within three full irrigation seasons after entry or making water-right application, and at least one-half of the irrigable area thereof so reclaimed within five full irrigation seasons after entry or making water-right application, except that the first full irrigation season affecting such land for which water-right application shall have been made prior to May 3, 1915, shall be the irrigation season of 1915. All land thus reclaimed and cultivated shall continue to be so reclaimed and cultivated until after final proof is made and accepted or patent or final water-right certificate issued. Failure to so reclaim lands subject to the said Reclamation Extension Act renders the entry or, in case of private land, the water-right application therefor, subject to cancellation.

(i) *Liens for unpaid charges*—(1) *On entries under the reclamation law.* Upon receipt of proof of reclamation and payment of water-right charges as provided in the act of August 9, 1912, as amended by the act of February 15, 1917 (39 Stat. 920; 43 U.S.C. 541), and in the act of August 26, 1912 (37 Stat. 610; 43 U.S.C. 547), in case of homestead entries under the reclamation law, on ceded Indian lands entered under the Reclamation Act, and in case of desert-land entries within the exterior limits of any land withdrawal or irrigation project under the Reclamation Act, if final proof of compliance with the homestead or desert-land law, as the case may be, has been previously submitted and has been accepted, or if such final proof is submitted at the time of the receipt of proof of reclamation and payment of charges, and is found to be sufficient as to residence, improvement, and cultivation the manager will issue final certificate on the entry. The final certificate so issued must be stamped by the authorizing officer when issued as follows: "Subject to the provisions of the act of August 9, 1912 (37 Stat. 265)." The entry, if found to be regular, will be approved by the manager for patent under said act of August 9, 1912, or August 26, 1912 (37 Stat. 610), and patent issued reserving the lien and containing other provisions as in said acts provided.

(2) *On entries other than those under reclamation law.* Upon receipt of proof of reclamation and payment of water-right charges, as provided in the act of August 9, 1962, as amended, in the case of homestead entries, other than those under the Reclamation Act, where a water-right application has been filed by the entryman, and the authorizing officer has been notified by the official in charge of the project of the acceptance of such application, if final proof has been accepted on the entry, or final proof is submitted at the time of the receipt of such reclamation proof and is found to be sufficient on examination in the proper office, the authorizing officer will issue final certificate of compliance with the homestead law. The entry, if found to be regular, will be approved by the authorizing officer for patent and final water-right certificate will be issued by the project official in charge, reserving a lien to the Government and its successor for the charges due or to become due.

(3) *Act of May 15, 1922.* Sec. 2 of the act of May 15, 1922 (42 Stat. 542; 43 U.S.C. 512) provides in part as follows:

> That patents and water-right certificates which shall hereafter be issued under the terms of the Act entitled "An Act providing for patents on reclamation entries, and for other purposes," approved August 9, 1912 (37 Stat. 265), for lands lying within any irrigation district with which the United States shall have contracted, by which the irrigation district agrees to make the payment of all charges for the building of irrigation works and for operation and maintenance, shall not reserve to the United States a lein for the payment of such charges; * * *.

(Sec. 10, 32, Stat. 390, as amended; 43 U.S.C. 378)

§ 2515.8 Flathead Irrigation District, Mont.

§ 2515.8-1 Authority.

The Flathead irrigation project was constructed within the Flathead Indian Reservation under the provisions of the act of April 23, 1904 (33 Stat. 302), as amended by section 15 of the act of May 29, 1908 (35 Stat. 448), and supplemented by the act of May

10, 1926 (44 Stat. 464), and other acts. Only those lands designated as farm units on farm-unit plats approved by the Secretary of the Interior or under his specific authority and those lands irrigable from the project embraced in Indian allotments are within the Flathead irrigation project. The designation of any tract or tracts of land as a farm unit or farm units includes those lands in the Flathead project, and the cancellation of any farm unit or farm units eliminates the lands formerly designated as such farm unit or farm units from the project.

(Sec. 15, 35 Stat. 450)

§ 2515.8-2 Requirements and limitations on entries.

(a) *Payment of appraised Indian price of land.* An entrymen for land within the Flathead project, in addition to complying with the ordinary provisions of the homestead laws applicable to his entry, must pay the appraised Indian price of the land. One-third of the appraised value of the land must be paid when entry is made and two-fifteenths of the appraised value, annually thereafter for 5 years beginning 1 year after the date of filing, without interest.

(b) *Acreage limitations.* No person can enter more than one farm unit, regardless of its acreage, nor can he enter a part of a farm unit, nor parts of two or more farm units, nor a farm unit and adjacent lands not designated as a farm unit, and no person can enter a farm unit who is not entitled to enter 160 acres under the homestead laws.

(c) *Payment of costs.* Persons who enter farm units must pay that part of the cost of building, operating and maintaining the irrigation works which is assessed against their tracts, in addition to the Indian price or appraised value of the lands. The building, operation, and maintenance charges against any particular unit or allotment will be based on the number of acres in it which can be irrigated and not on the entire area of the unit, as there will be no building, operation, or maintenance charges against any land in any unit which can not be irrigated. The entire Indian price must be paid for each acre in the units, regardless of the area of them which can be irrigated.

(Sec. 15, 35 Stat. 450)

§ 2515.8-3 Assignment.

(a) *Right to assign.* Under the provisions of the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441) persons who have made or may make homestead entries subject to the provisions of the Reclamation Act of June 17, 1902 (32 Stat. 388), may assign their entries in their entirety, or in part, at any time from and after filing with the Bureau of Land Management of satisfactory proof of the residence, improvements, and cultivation required by the ordinary provisions of the homestead law. The act of July 17, 1914 (38 Stat. 510; 43 U.S.C. 593), extends the provisions of the act of June 23, 1910, supra, of the Flathead project. Assignment of part of an entry within the Flathead project may be made only after the subdivision of the farm units.

(b) *Assignment of part of farm unit.* Where it is desired to assign a part of a farm unit, an application for the amendment, and subdivision, of such unit should be filed with the project engineer. The assignment, with accompanying showing by the assignor and assignee, must also be filed with the project engineer for his consideration.

(c) *Filing of instruments of assignment.* No assignment of a warm unit or any part thereof shall be accepted by the Bureau of Land Management, or recognized as valid for any purpose, until after the filing in the proper office of the showings and certificates required by paragraph (d) of this section.

(d) *Showing required.* Assignments under this act are expressly made subject to the limitations, charges, terms, and conditions of the act of April 23, 1904 (33 Stat. 302), as amended by section 15 of the act of May 29, 1908 (35 Stat. 448), and acts supplementary thereto or amendatory thereof, including the act of May 10, 1926 (44 Stat. 464), and inasmuch as the law limits the right of entry to one farm unit, and forbids the holding of more than one farm unit prior to payment of all building and betterment charges, each assignor must present a showing to the effect that the assignment is an absolute sale, divesting him of all interest in the premises assigned and each assignee must present a showing that he does not own or hold, and is not claiming, any other farm unit or entry under the act of April 23, 1904 (33 Stat. 302), and the acts supplementary thereto or amendatory thereof, upon which all installments of building and betterment charges have not been paid in full, and has no existing water-right applications covering an area of land which, added to that taken by assignment, will exceed 160 acres, or the maximum limit of area fixed by the Secretary of the Interior, and a further showing in the form of a certificate of the project engineer, that water-right application therefor is not yet receivable; or that the assignee has filed in the project office for acceptance a water-right application in due form for the land embraced in the assignment. A married woman whose husband is claiming any farm unit or entry upon which all installments of building and betterment charges have not been paid will not be allowed to take an assignment under the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), unless such assignment is purchased with her own money and for her own use and benefit.

(e) *Procedure governing assignments.* Assignments made and filed in accordance with the regulations in paragraphs (a) to (d) of this section should be noted on the proper office record and, if approved the assignees in each case will, at the proper time, make payment of the water-right charges and submit proof of reclamation as would the original entryman, and, after proof of full compliance with the law, may receive a patent for the land.

(Sec. 15, 35 Stat. 450)

§ 2515.8-4 Surveys: plats.

(a) *Cost of survey.* If a survey shall be found necessary to determine the boundaries of the subdivision of any such farm unit, or the division of the irrigable area, a deposit equal to the estimated cost of such survey must be made with the special disbursing agent of the project on the project by or on behalf of the parties concerned. Any excess over the actual cost will be returned to the depositor or depositors after completion of the survey, and they will also be required to make good any deficiency in their deposit.

(b) *Amendatory farm-unit plats.* When the plats describing the amended farm units are approved by the project engineer, he will forward two copies of the amendatory plat together with the assignment and accompanying showings to the proper office, where the amendatory plat will be treated as an official amendment of the farm-unit plat. A copy of the amendatory plat will also be forwarded promptly by the project engineer to the Area Director, Bureau of Indian Affairs, Billings, Montana, for formal approval.

(Sec. 15, 35 Stat. 450)

§ 2515.8-5 Mortgages.

(a) *Notice of interest by mortgagees.* Mortgagees of lands embraced in homestead entries within the Flathead project may file in the proper office for the district in which the land is located a notice of such mortgage interest, and shall thereupon become entitled to receive and be given the same notice of any contest or other proceedings thereafter had affecting the entry as is required to be given the entryman in connection with such proceedings, and a like notice of mortgage interest may be filed with the project engineer in case of any lands, whether or not water-right application has been filed, including homestead entries, and lands in private ownership; and thereupon the mortgagee shall receive copies of all notices of default in payment of the water-right charges levied by the Secretary of the Interior against such lands, and shall be permitted to make payment of the amount so in default within 60 days from the date of such notice. Any payment so made shall be credited on the charges levied by the Secretary of the Interior against such lands.

(b) *Notation of mortgage interest; effect of notation.* Every such notice of mortgage interest, filed as provided in the preceding section, must be forthwith noted upon the records of the project engineer, and of the proper office, and be promptly reported to the Area Director, Bureau of Indian Affairs. Relinquishment of a homestead entry, or part thereof, within the project, upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted, unless the mortgagee joins therein; nor will an assignment of such entry, or part thereof under the act of July 17, 1914 (38 Stat. 510; 43 U.S.C. 593), extending to the Flathead project the provisions of the act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), be recognized or permitted unless the assignment specifically refers to such mortgage and is made and accepted subject thereto.

(c) *Rights of mortgagee purchaser at foreclosure sale.* If such mortgagee buys in the land at foreclosure sale, no steps will be taken to cancel the water-right application, on account of failure of the applicant to maintain residence upon or in the neighborhood of the land, until 1 year after the end of the statutory period of redemption, if there be such statutory period; if not, until 1 year after the foreclosure sale; nor on account of the holdings by the same mortgagee of lands in excess of 160 acres or of the limit per single ownership of private lands as fixed by the Secretary of the Interior for which a water right may be purchased until 2 years after such foreclosure purchase, provided that all charges in connection with the water-right application that may be due at the time of foreclosure sale and all such charges that may become due during the period when the land is held under the terms hereof shall be promptly paid by or on behalf of the mortgagee; and also that within such period of 1 year an acceptable water-right application for such land be filed by a qualified person, who, upon submitting satisfactory evidence of transfer of title, shall receive a credit equal to all payments theretofore made on account of the water-right charges for said land. To secure the benefits of this order the mortgagee purchasing land at foreclosure sale hereunder must give notice thereof to the authorizing officer of the proper office and to the engineer in charge of the project within 60 days thereafter.

(Sec. 15, 35 Stat. 450)

§ 2515.8–6 Widows, heirs, or devises of entrymen.

(a) *Completion of entries by widows, heirs, or devisees.* The widows, heirs, or devisees of persons who make entries within the Flathead project will not be required both to reside upon and cultivate the lands covered by the entry of the persons from whom they inherit, but they must reclaim at least one-half of the total irrigable area of the entry for agricultural purposes, as required by the law, and make payment of all unpaid charges when due.

(b) *Rights of minor heirs.* Upon the death of a homesteader having an entry within the project, leaving no widow and only minor heirs, his right may, under section 2292, Revised Statutes (43 U.S.C. 171), be sold for the benefit of such heirs. (See heirs of Frederick C. DeLong, 36 L.D. 332.) The purchaser and his assignees take subject to the payment of the water-right charges authorized by law and the regulations thereunder and must reclaim one-half the irrigable area, as required by said law, but are not required otherwise to comply with the homestead law.

(Sec. 15, 35 Stat. 450)

§ 2515.8–7 Proof.

(a) *Commutation permitted.* These entries are subject to the commutation provisions of the homestead law. The irrigable areas are announced on farm-unit plats, and public notice, stating the amount of the charges and other details concerning payment, is issued by the Secretary of the Interior.

(b) *Requirements of reclamation proof.* Entrymen, in making proof of compliance with the law as to reclamation of one-half of the irrigable area and payment of charges due, must submit a showing duly corroborated by two witnesses, in duplicate, to the project engineer showing those facts. Thereupon it shall be the duty of the project engineer to verify the statement as to payment and also make such examination of the land as will enable him to determine whether reclamation as required by law and the regulations has been made. Should he find that reclamation has been accomplished he will so certify, but if he finds that reclamation has not been accomplished as required he will forward the proofs to the authorizing officer of the proper office in which the land is situated, with his report or findings thereon.

(c) *What constitutes reclamation and cultivation.* To comply with the provisions of the law requiring the reclamation of one-half the irrigable area of an entry within the Flathead project, the land must have been cleared of brush, trees, and other encumbrances provided with sufficient laterals for its effective irrigation, graded and otherwise put in proper condition for irrigation and crop growth, planted, watered, and cultivated, and during at least 2 years next preceding the date of approval by the project engineer of proof of reclamation, except as prevented by hailstorm or flooding, a satisfactory crop must be grown thereon. A satisfactory crop during any year shall be any one of the following:

(1) A crop of annuals producing a yield of at least one-half of the average yield on similar land under similar conditions on the project for the year in which it is grown;

(2) A substantial stand of alfalfa, clover, or of other perennial grass substantially equal in value to alfalfa or clover; or,

(3) A season's growth of orchard trees, or vines, of which 75 percent shall be in a thrifty condition.

(d) *Indian charges, testimony fees, and final commissions.* Upon the submission of proof on entries within the Flathead project, authorizing officers will accept only the payments of Indian charges and the testimony fees for "reducing testimony to writing and examining and approving testimony," and will not accept final commissions payable on such entries until proof is received of compliance with the requirements of the law as to reclamation and payment of the charges which have become due.

(e) *Credit for military or naval service.* Soldiers and sailors and other persons entitled to claim credit for military or naval service, as provided in Subpart 2096 of this chapter, will be allowed to claim such credit in connection with entries within the Flathead project, but will not be entitled to receive final certificate or patent until the requirements as to reclamation and payment of the waterright charges have been met.

(Sec. 15, 35 Stat. 450)

§ 2515.8-8 Final certificates.

(a) *Action on proofs; when final certificate may issue.* If such proof showing reclamation and payment of charges is filed, and the proof of compliance with the ordinary provisions of the homestead law as to residence, improvements, and cultivation is found, on examination by the authorizing officer, to be sufficient, he will issue final certificate on the entry as provided in paragraph (d)(1) of this section.

(b) *Procedure where proof is not acceptable.* If any proof offered under this law be irregular or insufficient the authorizing officer will reject it and allow the entryman the usual right of appeal.

(c) *Acceptance of proof of residence, cultivation, and improvement.* Entrymen who have resided on, cultivated, and improved their lands for the time required by the homestead law, and have submitted proof which has been found satisfactory thereunder by the Bureau of Land Management, but who are unable to furnish proof of reclamation because water has not been furnished, will be excused from further residence on their lands and will be given a notice reciting that further residence is not required, but that final certificate and patent will not issue until proof of reclamation by one-half of the irrigable area of the entry and payment of all charges due under public notices and orders issued in pursuance of the law.

(d) *Liens*—(1) *Endorsed on final certificate.* (i) Upon receipt of proof of reclamation and payment of waterright charges as provided in the act of August 9, 1912 (37 Stat. 265), extended to the Flathead project by the act of July 17, 1914 (38 Stat. 510), if proof of compliance with the homestead law has been previously submitted, and has been accepted, or if such proof is submitted at the time of the receipt of proof of reclamation and payment of charges, and is found to be sufficient as to residence, improvement, and cultivation, the authorizing officer will issue final certificate on the entry. The final certificate so issued must be endorsed by the authorizing officer across the face of each certificate when issued as follows: "Subject to lien, under act of August 9, 1912 (37 Stat. 265), as extended to the Flathead project by the act of July 17, 1914 (38 Stat. 510)."

(ii) A proviso to the act of May 10, 1926 (44 Stat. 465) provides: That all construction, operation, and maintenance costs, except such construction costs on the Camas Division held and treated as a deferred obligation herein provided for, on this project shall be, and are hereby, made a first lien against all lands within the project, which lien upon any particular farm unit shall be released by the Secretary of the Interior after the total amount charged against such unit shall have been paid, and a recital of such lien shall be made in any instrument issued prior to such release by the said Secretary. The contracts executed by such district or districts shall recognize and acknowledge the existence of such lien.

(2) *Release of lien.* The Area Director, Bureau of Indian Affairs, will, upon the full payment of all buildings and betterment charges by any water user, issue certificate of the full payment of such charges releasing the lien therefor reserved in the patent under the act of August 9, 1912.

(Sec. 15, 35 Stat. 450)

§ 2515.8-9 Cancellation of entries.

All homestead entrymen within the Flathead project must, in addition to paying the appraised value of the land and water-right charges, reclaim at least one-half of the total irrigable area in their entries for agricultural purposes. Failure to make any two payments of the appraised price when due or to reclaim the land as above indicated, or any failure to comply with the requirements of the homestead law and the acts authorizing the construction of the Flathead project as to residence, cultivation, improvement, and payments, will render the entry subject to cancellation, and the money paid subject to forfeiture, whether water-right application has been made or not. Failure to make any two payments of the installments of water-right charges when due will render such entries subject to cancellation; and upon receipt of a statement from the Area Director, Bureau of Indian Affairs, that two of such payments remain due and unpaid, after proper service of notice upon the entryman and upon the mortgagee, if any such there be of record, the date and manner of service being stated, the entry will, without further notice, be canceled.

(Sec. 15, 35 Stat. 450)

PART 2520—DESERT LAND ENTRIES

Subpart 2520—Desert Land Entries: General

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Subpart 2520—Desert Land Entries: General

AUTHORITY: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

SOURCE: 35 FR 9581, June 13, 1970, unless otherwise noted.

§ 2520.0-1 Purpose.

(a) It is the purpose of the statutes governing desert-land entries to encourage and promote the reclamation, by irrigation, of the arid and semiarid public lands of the Western States through individual effort and private capital, it being assumed that settlement and occupation will naturally follow when the lands have thus been rendered more productive and habitable.

§ 2520.0-3 Authority.

The act of March 3, 1877 (19 Stat. 377; 43 U.S.C. 321-323) as amended by the act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 231, 323, 325, 327-329), provides for the making of desert-land entries in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

§ 2520.0-5 Definitions.

(a) As used in the desert-land laws and the regulations of this subpart:

(1) "Reclamation" requires conducting water in adequate amounts and quality to the land so as to render it available for distribution when needed for irrigation and cultivation.

(2) "Cultivation" requires the operation, practice, or act of tillage or preparation of land for seed, and keeping the ground in a state favorable for the growth of crops.

(3) "Irrigation" requires the application of water to land for the purpose of growing crops.

(4) "Crop" includes any agricultural product to which the land under consideration is generally adapted and which would return a fair reward for the expense of producing it.

(5) "Water supply", to be adequate, must be sufficient to irrigate successfully and to reclaim all of the irrigable land embraced in an entry.

(6) "Water right" means the authority, whether by prior ownership, contract, purchase, or appropriation in accordance with state law, to use water on the land to be irrigated.

§ 2520.0-7 Cross references.

(a) For assignment of desert-land entries within Government reclamation projects, see § 2524.5(a).

(b) For provisions under Appeals and Hearings see Parts 1840 and 1850 of this chapter.

(c) For relinquishments, in general, see Subpart 1825 of this chapter.

(d) For residence and cultivation requirements under the homestead laws, see § 2511.4-2(a).

§ 2520.0-8 Land subject to disposition.

(a) *Land that may be entered as desert land.* (1) As the desert-land law requires the artificial irrigation of any land entered thereunder, lands which are not susceptible of irrigation by practicable means are not deemed subject to entry as desert lands. The question as to whether any particular tract sought to be entered as desert land is in fact irrigable from the source proposed by the applicant will be investigated and determined before the application for entry is allowed. In order to be subject to entry under the desert-land law, public lands must be not only irrigable but also surveyed, unreserved, unappropriated, non-mineral (except lands withdrawn, classified, or valuable for coal, phosphate, nitrate, potash, sodium, sulphur, oil, gas or asphaltic minerals, which may be entered with a reservation of such mineral deposits, as explained in Subpart 2093, nontimbered, and such as will not, without artificial irrigation, produce any reasonably remunerative agricultural crop by the usual means or methods of cultivation. In this latter class are those lands which, one year with another for a series of years, will not without irrigation produce paying crops, but on which crops can be successfully grown in alternate years by means of the so-called dry-farming system. (37 L.D. 522 and 42 L.D. 524.)

(2) Applications to make desert-land entries of lands embraced in applications, permits, or leases under the act of February 25, 1920 (41 Stat. 437) if in all other respects complete, will be treated in accordance with §§ 2093.0-3 to 2093.0-7. Applications to make desert-land entries of lands within a naval petroleum reserve must be rejected, as no desert-land entry may be allowed for such lands.

(3) Land that has been effectually reclaimed is not subject to desert land entry.

(b) *Quantity of lands that may be entered.* An entry of lands under the act of March 3, 1877, is limited to 320 acres, subject to the following additional limitations:

(1) An entry of lands within an irrigation district which the Secretary of the Interior or his delegate has approved under the act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621-630), is limited to 160 acres.

(2) An entryman may have a desert-land entry for such a quantity of land as, taken together with all land acquired and claimed by him under the other agricultural land laws since August 30, 1890, does not exceed 320 acres in the aggregate, or 480 acres if he shall have made an enlarged homestead entry of 320 acres (acts of August 30, 1890; 26 Stat. 391; 43 U.S.C. 212; and of February 27, 1917; 39 Stat. 946; 43 U.S.C. 330).

(c) *Entries restricted to surveyed lands.* Unsurveyed public land withdrawn by Executive Orders Nos. 6910 and 6964 of November 26, 1934, and February 5, 1935, respectively, is not subject to appropriation, under the desert-land laws, until such appropriation has been authorized by classification. (See Parts 2410, 2420, and 2430.)

(d) *Economic unit requirements, compactness.* (1) One or more tracts of public lands may be included in a desert land entry and the tracts so entered need not be contiguous. All the tracts entered, however, shall be sufficiently close to each other to be managed satisfactorily as an economic unit. In addition, the lands in the entry must be in as compact a form as possible taking into consideration the character of available public lands and the effect of allowance of the entry on the remaining public lands in the area.

(2) In addition to the other requirements of the regulations in this part, applicants for desert land entry must submit with their applications information showing that the tracts applied for are sufficiently close to each other to be managed satisfactorily as an economic unit and that the lands in the application are as compact as possible in the circumstances.

(3) In determining whether an entry can be allowed in the form sought, the authorized officer of the Bureau of Land Management will take into consideration such factors as the topography of the applied for and adjoining lands, the availability of public lands near the lands sought, the private lands farmed by the applicant, the farming systems and practices common to the locality and the character of the lands sought, and the practicability of farming the lands as an economically feasible operating unit.

Subpart 2521—Procedures

SOURCE: 35 FR 9582, June 13, 1970, unless otherwise noted.

§ 2521.1 Who may make desert-land entry.

(a) *Citizenship.* (1) Any citizen of the United States 21 years of age, or any person of that age who has declared his intention of becoming a citizen of the United States, and who can truthfully make the statements specified in §§ 2520.0-8(c) and 2521.2(a) can make a desert-land entry. Thus, a woman, whether married or single, who possesses the necessary qualifications, can make a desert-land entry, and, if married, without taking into consideration any entries her husband may have made.

(2) At the time of making final proof claimants of alien birth must have been admitted to citizenship, but evidence of naturalization need not be furnished if it has already been filed in connection with the original declaration or with the proof of an assignment of the entry.

(b) *Second and additional entries.* A person's right of entry under the desert-land law is exhausted either by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by taking an assignment of an entry, in whole or in part, except under the conditions described in paragraphs (b)(1) and (2) of this section.

(1) Under the act of September 5, 1914 (38 Stat. 712; 43 U.S.C. 182), if a person, otherwise duly qualified to make a desert-land entry, has previously filed an allowable application, or made such entry or entries and through no fault of his own has lost, forfeited, or abandoned the same, such person may make another entry. In such case, however, it must be shown that the prior application, entry, or entries were made in good faith, and were lost, forfeited, or abandoned because of matters beyond the applicant's control, and that the applicant has not speculated in his right, nor committed a fraud or attempted fraud in connection with such prior entry or entries. As the assignment of an entry involves no loss, forfeiture, or abandonment thereof, but carries a benefit to the assignor, it is held to exhaust his right of entry under the desert-land law. Hence, no person who has assigned such entry, in whole or in part, will be permitted to make another entry or to take one or any part thereof by assignment except where paragraph (b)(2) of this section applies.

(2) The act of June 16, 1955 (69 Stat. 138) authorizes any person who prior to June 16, 1955, made a valid desert-land entry on lands subject to the acts of June 22, 1910 (36 Stat. 583; 30 U.S.C. 33-85), or of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121-123), if otherwise qualified to enter as a personal privilege not assignable, an additional tract of desert land, providing such additional tract shall not, together with the original entry, exceed 320 acres. Applicants and entrymen under the act of June 16, 1955, are subject to, and must comply with, all the regulations of this part, including the acreage limitations of § 2520.0-8(b).

§ 2521.2 Petitions and applications.

(a) *Filing and fees.* (1) A person who desires to enter public lands under the desert land laws must file an application together with a petition on forms approved by the Director, properly executed. However, if the lands described in the application have been already classified and opened for disposition under the desert land laws, no petition is required. The documents must be filed in the proper office (see § 1821.2-1 of this chapter).

(2) All applications must be accompanied by an application service fee of $15 which is not returnable, and the payment of 25 cents per acre for the lands therein described as required by law.

(b) *Post-office addresses of applicants and witnesses.* Applicants and witnesses must in all cases state their places of actual residence, their business or occupation, and their post-office addresses. It is not sufficient to name only the county or State in which a person lives, but the town or city must be named also; and where the residence is in a city the street and number must be given. It is especially important to claimants that upon changing their post-office addresses they promptly notify the authorizing officer of such change, for in case of failure to do so their entries may be canceled upon notice sent to the address of record but not received by them.

(c) *Execution of applications and proofs; time for filing of applications.* (1) Applications and proofs, except final proofs required by R.S. 2294 (43 U.S.C. 254), must be signed by the applicants but need not be under oath. Final proofs may be executed before any officer authorized to administer oaths in public land cases, as explained by § 1821.3-2 of this chapter.

(2) An application to make desert-land entry is not acceptable if dated more than 10 days before its filing at the land office.

(d) *Evidence of water rights required with application.* No desert-land application will be allowed unless accompanied by evidence satisfactorily showing either that the intending entryman has already acquired by appropriation, purchase, or contract a right to the permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, as far as then possible, appropriate steps looking to the acquisition of such a right, or, in States where no permit or right to appropriate water is granted until the land embraced within the application is classified as suitable for desert-land entry or the entry is allowed, a showing that the applicant is otherwise qualified under State law to secure such permit or right. If applicant intends to procure water from an irrigation district, corporation, or association, but is unable to obtain a contract for the water in advance of the allowance of his entry, then he must furnish, in lieu of the contract, some written assurance from the responsible officials of such district, corporation, or association that, if his entry be allowed, applicant will be able to obtain from that source the necessary water. The authorizing officer will examine the evidence submitted in such applications and either reject defective applications or require additional evidence.

§ 2521.3 Assignment.

(a) *Lands which may be assigned.* While by the act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 329), assignments of desert-land entries were recognized, the Department of the Interior, largely for administrative reasons, held that a desert-land entry might be assigned as a whole or in its entirety, but refused to recognize the assignment of only a portion of an entry. The act of March 28, 1908, however, provides for an assignment of such entries, in whole or in part, but this does not mean that less than a legal subdivision may be assigned. Therefore no assignment, otherwise than by legal subdivisions, will be recognized. The legal subdivisions assigned must be contiguous.

(b) *Qualifications of assignees.* (1) The act of March 28, 1908, also provides that no person may take a desert-land entry by assignment unless he is qualified to enter the tract so assigned to him. Therefore, if a person is not at least 21 years of age and, excepting Nevada, a resident citizen of the State wherein the land involved is located; or if he is not a ciitzen of the United States, or a person who has declared his intention to become a citizen thereof; or, if he has made a desert-land entry in his own right and is not entitled under § 2521.1 to make a second or an additional entry, he cannot take such an entry by assignment. The language of the act indicates that the taking of an entry by assignment is equivalent to the making of an entry, and this being so, no person is allowed to take more than one entry by assignment, unless it be done as the exercise of a right of second or additional entry.

(2) A person who has the right to make a second or additional desert-land entry may exercise that right by taking an assignment of a desert-land entry, or part of such entry, if he is otherwise qualified to make a desert-land entry for the particular tract assigned.

(3) The act of March 28, 1908, also provides that no assignment to or for the benefit of any corporation shall be authorized or recognized.

(c) *Showing required of assignees; recognition of assignments.* (1) As evidence of the assignment there should be transmitted to the authorizing officer the original deed of assignment or a certified copy thereof. Where the deed of assignment is recorded a certified copy may be made by the officer who has custody of the record. Where the original deed is presented to an officer qualified to take proof in desert-land cases, a copy certified by such officer will be accepted.

(2) An assignee must file with his deed of assignment, a statement on a form approved by the Director, showing his qualifications to take the entry

assigned to him. He must show what applications or entries, if any, have been made by him or what entries assigned to him under the agricultural public land laws, and he must also show his qualifications as a citizen of the United States; that he is 21 years of age or over; and also that he is a resident citizen of the State in which the land assigned to him is situated, except in the State of Nevada, where citizenship of the United States only is required. If the assignee is not a native-born citizen of the United States, he should also furnish a statement as to his citizenship status in accordance with Subpart 1811 of this chapter. If the assignee is a woman, she should in all cases state whether she is married, and if so, she must make the showing required by Subpart 1811 of this chapter. Desert-land entries are initiated by the payment of 25 cents per acre, and no assignable right is acquired by the application prior to such payment. (6 L.D. 541, 33 L.D. 152.) An assignment made on the day of such payment, or soon thereafter, is treated as suggesting fraud, and such cases will be carefully scrutinized. The provisions of law authorizing the assignment of desert entries, in whole or in part, furnish no authority to a claimant under said law to make an executory contract to convey the land after the issuance of patent and thereafter to proceed with the submission of final proof in furtherance of such contract. (34 L.D. 383.) The sale of land embraced in an entry at any time before final payment is made must be regarded as an assignment of the entry, and in such cases the person buying the land must show that he possesses all the qualifications required of an assignee. (29 L.D. 453.) The assignor of a desert-land entry may execute the assignment before any officer authorized to take acknowledgements of deeds. The assignee must furnish a statement on a form approved by the Director as to his qualifications.

(3) No assignments of desert-land entries or parts of entries are conclusive until examined in the proper office and found satisfactory and the assignment recognized. When recognized, however, the assignee takes the place of the assignor as effectively as though he had made the entry, and is subject to any requirement that may be made relative thereto. The assignment of a desert-land entry to one disqualified to acquire title under the desert-land law, and to whom, therefore, recognition of the assignment is refused by the authorizing officer, does not of itself render the entry fraudulent, but leaves the right thereto in the assignor. In such connection, however, see 42 L.D. 90 and 48 L.D. 519.

(4) All applications for recognition of assignment of desert-land entries must be accompanied by an application service fee of $10 which will not be returnable.

§ 2521.4 When lands may be sold, taxed, or mortgaged.

(a) After final proof and payment have been made the land may be sold and conveyed to another person without the approval of the Bureau of Land Management, but all such conveyances are nevertheless subject to the superior rights of the United States, and the title so contained would fall if it should be finally determined that the entry was illegal or that the entryman had failed to comply with the law.

(b) Lands embraced in unperfected desert-land entries are not subject to taxation by the State authorities, nor to levy and sale under execution to satisfy judgments against the entrymen, except as hereinafter set forth in this section.

(c) Lands embraced in desert-land entries within an irrigation district which the Secretary of the Interior has approved under the act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621-630), may be taxed and otherwise dealt with as provided by said act, and lands in desert-land entries within irrigation projects constructed under the Reclamation Act may be taxed as provided for by the act of June 13, 1930 (46 Stat. 581; 43 U.S.C. 455, 455a-455c).

(d) A desert-land entryman may, however, mortgage his interest in the entered land if, by the laws of the State in which the land is situated, a mortgage of land is regarded as merely creating a lien thereon and not as a conveyance thereof. The purchaser at a sale had for the foreclosure of such mortgage may be recognized as assignee upon furnishing proof of his qualifications to take a desert-land entry by assignment. Transferees, after final proof, mortgagees, or other encumbrancers may file in the proper office written notice stating the nature of their claims, and they will there upon become entitled to receive notice of any action taken by the Bureau of Land Management with reference to the entry.

(e) The filing of all notices of recordation of claim by transferees, mortgagees or other encumbrancer under this section must be accompanied by a service charge of $10 which will not be returnable.

§ 2521.5 Annual proof.

(a) *Showing required.* (1) In order to test the sincerity and good faith of claimants under the desert-land laws and to prevent the segregation for a number of years of public lands in the interest of persons who have no intention to reclaim them, Congress, in the act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 327, 328) made the requirement that a map be filed at the initiation of the entry showing the mode of contemplated irrigation and the proposed source of water supply, and that there be expended yearly for 3 years from the date of the entry not less than $1 for each acre of the tract entered, making a total of not less than $3 per acre, in the necessary irrigation, reclamation, and cultivation of the land, in permanent improvements thereon, and in the purchase of water rights for the irrigation thereof, and that at the expiration of the third year a map or plan be filed showing the character and extent of the improvements placed on the claim. Said act, however, authorizes the submission of final proof at an earlier date than 4 years from the time the entry is made in cases wherein reclamation has been effected and expenditures of not less than $3 per acre have been made.

(2) Yearly or annual proof of expenditures must consist of the statements of "two or more credible witnesses," each of whom must have general knowledge that the expenditures were made for the purpose stated in the proof. Annual proofs must contain itemized statements showing the manner in which expenditures were made.

(b) *Acceptable expenditures.* (1) Expenditures for the construction and maintenance of storage reservoirs, dams, canals, ditches, and laterals to be used by claimant for irrigating his land; for roads where they are necessary; for erecting stables, corrals, etc.; for digging wells, where the water therefrom is to be used for irrigating the land; for stock or interest in an approved irrigation company, or for taxes paid to an approved irrigation district through which water is to be secured to irrigate the land; and for leveling and bordering land proposed to be irrigated, will be accepted. Expenditures for fencing all or a portion of the claim, for surveying for the purpose of ascertaining the levels for canals, ditches, etc., and for the first breaking or clearing of the soil are also acceptable.

(2) The value to be attached to, and the credit to be given for, an expenditure for works or improvements is the reasonable value of the work done or improvement placed upon the land, according to the market price therefor, or for similar work or improvements prevailing in the vicinity, and not the amount alleged by a claimant to have been expended nor the mere proof of expenditures, as exhibited by checks or other vouchers. (Bradley v. Vasold, 36 L.D. 106.)

(c) *Expenditures not acceptable.* (1) Expenditures for cultivation after the soil has been first prepared may not be accepted, because the claimant is supposed to be compensated for such work by the crops to be reaped as a result of cultivation. Expenditures for surveying the claim in order to locate the corners of same may not be accepted. The cost of tools, implements, wagons, and repairs to same, used in construction work, may not be computed in cost of construction. Expenditures for material of any kind will not be allowed unless such material has actually been installed or employed in and for the purpose for which it was purchased. For instances, if credit is asked for posts and wire for fences or for pump or other well machinery, it must be shown that the fence has been actually constructed or the well machinery actually put in place. No expenditures can be credited on annual proofs upon a desert-land entry unless made on account of that particular entry, and expenditures once credited can not be again applied. This rule applies to second entries as well as to original entries, and a claimant who relinquishes his entry and makes second entry of the same land under the act of September 5, 1914, cannot receive credit on annual proofs upon the second entry for expenditures made on account of the former entry. (41 L.D. 601 and 42 L.D. 523.)

(2) Expenditures for the clearing of the land will not receive credit in cases where the vegetation or brush claimed to have been cleared away has not been actually removed by the roots. Therefore, expenditures for clearing, where as a matter of fact there has been only crushing, or rolling, or what is known in some localities as railing the land will not be accepted.

(3) No expenditures for stock or interest in an irrigation company, through which water is to be secured for irrigating the land, will be accepted as satisfactory annual expenditure until a field examiner, or other authorized officer, has submitted a report as to the resources and reliability of the company, including its actual water right, and such report has been favorably acted upon by the Bureau of Land Management. The stock purchased must carry the right to water, and it must be shown that payment in cash has been made at least to the extent of the amount claimed as expenditure for the purchase of such stock in connection with the annual proof submitted, and such stock must be actually owned by the claimants at the time of the submission of final proof.

(d) *Procedure where proof is not made when due.* Authorizing officers will examine their records frequently for the purpose of ascertaining whether all annual proofs due on pending desert-land entries have been made, and in every case where the claimant is in default in that respect they will send him notice and allow him 60 days in which to submit such proof. If the proof is not furnished as required the entry will be canceled. During the pendency of a Government proceeding initiated by such notice the entry will be protected against a private contest charging failure to make the required expenditures, and such contest will neither defeat the claimant's right to equitably perfect the entry as to the matter of expenditures during the 60 days allowed in the notice nor secure to the contestant a preference right in event the entry be canceled for default under said notice.

(e) *Desert land entry in more than one district.* When a desert-land entry embraces land in more than one district, the required annual proofs may be filed in either district, provided proper reference is made to the portion of the entry in the adjoining district, and the entryman must notify the authorized officer of the adjoining district by letter of the date when the annual proof is filed.

(f) *Extensions of time.* (1) The law makes no provision for extensions of time in which to file annual proof becoming due subsequent to December 31, 1936, on desert-land entries not embraced within the exterior boundaries of any withdrawal or irrigation project under the Reclamation Act of June 17, 1902 (32 Stat. 388), and extensions for said purpose cannot therefore be granted. However, where a township is suspended from entry for the purpose of resurvey thereof the time between the date of suspension and the filing in the local office of the new plat of survey will be excluded from the period accorded by law for the reclamation of land under a desert entry within such township and the statutory life of the entry extended accordingly (40 L.D. 223). During the continuance of the extension the claimant may, at his option, defer the making of annual expenditures and proof thereof.

(2) Extensions of time for making desert-land proofs were authorized by the acts of June 16, 1933 (48 Stat. 274; 43 U.S.C. 256a), July 26, 1935 (49 Stat. 504; 43 U.S.C. 256a), and June 16, 1937 (50 Stat. 303; 43 U.S.C. 256a). Such acts affect only proofs becoming due

on or before December 31, 1936. For that reason, the regulations which were issued thereunder have not been included in this chapter.

(g) *Submission of proof before due date.* Nothing in the statutes or regulations should be construed to mean that the entryman must wait until the end of the year to submit his annual proof because the proof may be properly submitted as soon as the expenditures have been made. Proof sufficient for the 3 years may be offered whenever the amount of $3 an acre has been expended in reclaiming and improving the land, and thereafter annual proof will not be required.

§ 2521.6 Final proof.

(a) *General requirements.* The entryman, his assigns, or, in case of death, his heirs or devisees, are allowed 4 years from date of the entry within which to comply with the requirements of the law as to reclamation and cultivation of the land and to submit final proof, but final proof may be made and patent thereon issued as soon as there has been expended the sum of $3 per acre in improving, reclaiming, and irrigating the land, and one-eighth of the entire area entered has been properly cultivated and irrigated, and when the requirements of the desert-land laws as to water rights and the construction of the necessary reservoirs, ditches, dams, etc., have been fully complied with.

(1) Where the proof establishes that the entryman cannot effect timely compliance with the law, the entry must be canceled unless statutory authority permits the granting of an extension of time or other relief.

(b) *Notice of intention to make final proof.* When an entryman has reclaimed the land and is ready to make final proof, he should apply to the authorizing officer for a notice of intention to make such proof. This notice must contain a complete description of the land, give the number of the entry and name of the claimant, and must bear an endorsement specifically indicating the source of his water supply. If the proof is made by an assignee, his name, as well as that of the original entryman, should be stated. It must also show when, where and before whom the proof is to be made. Four witnesses may be named in this notice, two of whom must be used in making proof. Care should be exercised to select as witnesses persons who are familiar, from personal observation, with the land in question, and with what has been done by the claimant toward reclaiming and improving it. Care should also be taken to ascertain definitely the names and addresses of the proposed witnesses, so that they may correctly appear in the notice.

(c) *Publication of final-proof notice.* The authorizing officer will issue the usual notice for publication. This notice must be published once a week for five successive weeks in a newspaper of established character and general circulation published nearest the lands (see 38 L.D. 131; 43 L.D. 216). The claimant must pay the cost of the publication but it is the duty of authorizing officers to procure the publication of proper final-proof notices. The date fixed for the taking of the proof must be at least 30 days after the date of first publication. Proof of publication must be made by the statement of the publisher of the newspaper or by someone authorized to act for him.

(d) *Submission of final proof.* On the day set in the notice (or, in the case of accident or unavoidable delay, within 10 days thereafter), and at the place and before the officer designated, the claimant will appear with two of the witnesses named in the notice and make proof of the reclamation, cultivation, and improvement of the land. The testimony of each claimant should be taken separately and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separately and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state, in and as a part of the final-proof testimony given by them, that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others. In every instance where, for any reason whatever, final proof is not submitted within the 4 years prescribed by law, or within the period of an extension granted for submitting such proof, a statement should be filed by claimant, with the proof, explaining the cause of delay.

The final proof may be made before any officer authorized to administer oaths in public land cases, as explained in § 1821.3-2 of this chapter.

(e) *Showing as to irrigation system.* The final proof must show specifically the source and volume of the water supply and how it was acquired and how it is maintained. The number, length, and carrying capacity of all ditches, canals, conduits, and other means to conduct water to and on each of the legal subdivisions must also be shown. The claimant and the witnesses must each state in full all that has been done in the matter of reclamation and improvements of the land, and must answer fully, of their own personal knowledge, all of the questions contained in the final-proof blanks. They must state plainly whether at any time they saw the land effectually irrigated, and the different dates on which they saw it irrigated should be specifically stated.

(f) *Showing as to lands irrigated and reclaimed.* While it is not required that all of the land shall have been actually irrigated at the time final proof is made, it is necessary that the one-eighth portion which is required to be cultivated shall also have been irrigated in a manner calculated to produce profitable results, considering the character of the land, the climate, and the kind of crops being grown. (Alonzo B. Cole, 38 L.D. 420.) The cultivation and irrigation of the one-eighth portion of the entire area entered may be had in a body on one legal subdivision or may be distributed over several subdivisions. The final proof must clearly show that all of the permanent main and lateral ditches, canals, conduits, and other means to conduct water necessary for the irrigation of all the irrigable land in the entry have been constructed so that water can be actually applied to the land as soon as it is ready for cultivation. If pumping be relied upon as the means of irrigation, the plant installed for that purpose must be of sufficient capacity to render available enough water for all the irrigable land. If there are any high points or any portions of the land which for any reason it is not practicable to irrigate, the nature, extent, and situation of such areas in each legal subdivision must be fully stated. If less than one-eighth of a smallest legal subdivision is practically susceptible of irrigation from claimant's source of water supply and no portion thereof is used as a necessary part of his irrigation scheme, such subdivision must be relinquished. (43 L.D. 269.)

(g) *Showing as to tillage of land.* As a rule, actual tillage of one-eighth of the land must be shown. It is not sufficient to show only that there has been a marked increase in the growth of grass or that grass sufficient to support stock has been produced on the land as a result of irrigation. If, however, on account of some peculiar climatic or soil conditions, no crops except grass can be successfully produced, or if actual tillage will destroy or injure the productive quality of the soil, the actual production of a crop of hay of merchantable value will be accepted as sufficient compliance with the requirements as to cultivation. (32 L.D. 456.) In such cases, however, the facts must be stated and the extent and value of the crop of hay must be shown, and, as before stated, that same was produced as a result of actual irrigation.

(h) *Showing as to water right.* (1) In every case where the claimant's water right is founded upon contract or purchase the final proof must embrace evidence which clearly establishes the fact and legal sufficiency of that right. If claimant's ownership of such right has already been evidenced in connection with the original entry or some later proceeding, then the final proof must show his continued possession thereof. If the water right relied on is obtained under claimant's appropriation, the final proof, considered together with any evidence previously submitted in the matter, must show that the claimant has made such preliminary filings as are required by the laws of the State in which the land is located, and that he has also taken all other steps necessary under said laws to secure and perfect the claimed water right. In all cases the water right, however it be acquired, must entitle the claimant to the use of a sufficient supply of water to irrigate successfully all the irrigable land embraced in his entry, notwithstanding that the final proof need only show the actual irrigation of one-eighth of that area.

(2) In those States where entrymen have made applications for water rights and have been granted permits but where no final adjudication of the water right can be secured from the State authorities owing to delay in the adjudication of the watercourses or other delay for which the entrymen are in no way responsible, proof that the entrymen have done all that is required of them by the laws of the State, together with proof of actual irrigation of one-eighth of the land embraced in their entries, may be accepted. This modification of the rule that the claimant must furnish evidence of an absolute water right will apply only in those States where under the local laws it is impossible for the entryman to secure final evidence of title to his water right within the time allowed him to submit final proof on his entry, and in such cases the best evidence obtainable must be furnished. (35 L.D. 305.)

(3) It is a well-settled principle of law in all of the States in which the desert land acts are operative that actual application to a beneficial use of water appropriated from public streams measures the extent of the right to the water, and that failure to proceed with reasonable diligence to make such application to beneficial use within a reasonable time constitutes an abandonment of the right. (Wiel's Water Rights in the Western States, sec. 172.) The final proof, therefore, must show that the claimant has exercised such diligence as will, if continued, under the operation of this rule result in his definitely securing a perfect right to the use of sufficient water for the permanent irrigation and reclamation of all of the irrigable land in his entry. To this end the proof must at least show that water which is being diverted from its natural course and claimed for the specific purpose of irrigating the lands embraced in claimant's entry, under a legal right acquired by virtue of his own or his grantor's compliance with the requirements of the State laws governing the appropriation of public waters, has actually been conducted through claimant's main ditches to and upon the land; that one-eighth of the land embraced in the entry has been actually irrigated and cultivated; that water has been brought to such a point on the land as to readily demonstrate that the entire irrigable area may be irrigated from the system; and that claimant is prepared to distribute the water so claimed over all of the irrigable land in each smallest legal subdivision in quantity sufficient for practical irrigation as soon as the land shall have been cleared or otherwise prepared for cultivation. The nature of the work necessary to be performed in and for the preparation for cultivation of such part of the land as has not been irrigated should be carefully indicated, and it should be shown that the said work of preparation is being prosecuted with such diligence as will permit of beneficial application of appropriated water within a reasonable time.

(4) Desert-land claimants should bear in mind that a water right and a water supply are not the same thing and that the two are not always or necessarily found together. Strictly speaking, a perfect and complete water right for irrigation purposes is confined to and limited by the area of land that has been irrigated with the water provided thereunder. Under the various State laws, however, an inchoate or incomplete right may be obtained which is capable of ripening into a perfect right if the water is applied to beneficial use with reasonable diligence. A person may have an apparent right of this kind for land which he has not irrigated, and which, moreover, he never can irrigate because of the lack of available water to satisfy his apparent right. Such an imperfect right, of course, cannot be viewed as meeting the requirements of the desert-land law which contemplates the eventual reclamation of all the irrigable land in the entry. Therefore, and with special reference to that portion of the irrigable land of an

entry not required to be irrigated and cultivated before final proof, an incomplete (though real) water right will not be acceptable if its completion appears to be impossible because there is no actual supply of water available under the appropriation in question.

(i) *Showing where water supply is derived from irrigation project.* (1) Where the water right claimed in any final proof is derived from an irrigation project it must be shown that the entryman owns such an interest therein as entitles him to receive from the irrigation works of the project a supply of water sufficient for the proper irrigation of the land embraced in his entry. Investigations by field examiners as to the resources and reliability, including particularly the source and volume of the water supply, of all irrigation companies associations, and districts through which desert-land entrymen seek to acquire water rights for the reclamation of their lands are made, and it is the purpose of the Bureau of Land Management to accept no annual or final proofs based upon such a water right until an investigation of the company in question has been made and report thereon approved. The information so acquired will be regarded as determining, at least tentatively, the amount of stock or interest which is necessary to give the entryman a right to a sufficient supply of water; but the entryman will be permitted to challenge the correctness of the report as to the facts alleged and the validity of its conclusions and to offer either with his final proof or subsequently such evidence as he can tending to support his contentions.

(2) Entrymen applying to make final proof are required to state the source of their water supply, and if water is to be obtained from the works of an irrigation company, association, or district the authorizing officer will endorse the name and address of the project upon the copy of the notice to be forwarded to the State Director. If the report on the company has been acted upon by the Bureau of Land Management and the proof submitted by claimant does not show that he owns the amount of stock or interest in the company found necessary for the area of land to be reclaimed, the authorizing officer will suspend the proof, advise the claimant of the requirements made by the Bureau of Land Management in connection with the report, and allow him 30 days within which to comply therewith or to make an affirmative showing in duplicate and apply for a hearing. In default of any action by him within the specified time the authorizing officer will reject the proof, subject to the usual right of appeal.

(j) *Final-proof expiration notice.* (1) Where final proof is not made within the period of 4 years, or within the period for which an extension of time has been granted, the claimant will be allowed 90 days in which to submit final proof. (44 L.D. 364.)

(2) Should no action be taken within the time allowed, the entry will be canceled. The 90 days provided for in this section must not be construed as an extension of time or as relieving the claimant from the necessity of explaining why the proof was not made within the statutory period or within such extensions of that period as have been specifically granted.

(k) *Requirements where township is suspended for resurvey.* No claimant will be required to submit final proof while the township embracing his entry is under suspension for the purpose of resurvey. (40 L.D. 223.) This also applies to annual proof. In computing the time when final proof on an entry so affected will become due the period between the date of suspension and the filing in the local office of the new plat of survey will be excluded. However, if the claimant so elects, he may submit final proof on such entry notwithstanding the suspension of the township.

§ 2521.7 Amendments.

(a) *To enlarge area of desert-land entry.* Amendment for the purpose of enlarging the area of a desert-land entry will be granted under and in the conditions and circumstances now to be stated.

(1) In any case where it is satisfactorily disclosed that entry was not made to embrace the full area which might lawfully have been included therein

because of existing appropriations of all contiguous lands then appearing to be susceptible of irrigation through and by means of entryman's water supply, or of all such lands which seemed to be worthy of the expenditure requisite for that purpose, said lands having since been released from such appropriations.

(2) Where contiguous tracts have been omitted from entry because of entryman's belief, after a reasonably careful investigation, that they could not be reclaimed by means of the water supply available for use in that behalf, it having been subsequently discovered that reclamation thereof can be effectively accomplished by means of a changed plan or method of conserving or distributing such water supply.

(3) Where, at the time of entry, the entryman announced, in his declaration, his purpose to procure the cancellation, through contest or relinquishment, of an entry embracing lands contiguous to those entered by him, and thereafter to seek amendment of his entry in such manner as to embrace all or some portion of the lands so discharged from entry.

(b) *Conditions governing amendments in exercise of equitable powers; amendments involving homestead and desert-land entries of adjoining lands.* Applications for amendment presented pursuant to § 1821.6-5(a) of this chapter will not be granted, except where at least one legal subdivision of the lands originally entered is retained in the amended entry, and any such application must be submitted within 1 year next after discovery by the entryman of the existence of the conditions relied upon as entitling him to the relief he seeks, or within 1 year succeeding the date on which, by the exercise of reasonable diligence, the existence of such conditions might have been discovered: *Provided, nevertheless,* That where an applicant for amendment has made both homestead and desert land entries for contiguous lands, amendment may be granted whereby to transfer the desert-land entry, in its entirety, to the land covered by the homestead entry, and the homestead entry, in its entirety, to the land covered by the desert-land entry, or whereby to enlarge the desert-land entry in such manner as that it will include the whole or some portion of the lands embraced in the homestead entry, sufficient equitable reason for such enlargement being exhibited, and the area of the enlarged entry in no case exceeding 320 acres. Applications for such amendments may be made under §§ 1821.6-1 to 1821.6-5 of this chapter and on the prescribed form, in so far as the same are applicable. A supplemental statement should also be furnished, if necessary, to show the facts.

(c) *Evidence of water-right to accompany application to amend desert-land entry.* Application to amend desert-land entries by the addition of a new and enlarged area or by transferring the entry to lands not originally selected for entry must be accompanied by evidence of applicant's right to the use of water sufficient for the adequate irrigation of said enlarged area or of the lands to which entry is to be transferred. Such evidence must be in the form prescribed by § 2521.2.

§ 2521.8 Contests.

(a) Contests may be initiated by any person seeking to acquire title to or claiming an interest in the land involved against a party to any desert-land entry because of priority of claim or for any sufficient cause affecting the legality or validity of the claim not shown by the records of the Bureau of Land Management.

(b) Successful contestants will be allowed a preference right of entry for 30 days after notice of the cancellation of the contested entry, in the same manner as in homestead cases, and the authorizing officer will give the same notice and is entitled to the same fee for notice as in other cases.

§ 2521.9 Relinquishments.

A desert-land entry may be relinquished at any time by the party owning the same. Conditional relinquishments will not be accepted.

Subpart 2522—Extensions of Time To Make Final Proof

SOURCE: 35 FR 9587, June 13, 1970, unless otherwise noted.

§ 2522.1 General acts authorizing extensions of time.

(a) There are five general acts of Congress which authorize the allowance, under certain conditions, of an extension of time for the submission of final proof by a desert-land claimant. Said acts are the following: June 27, 1906 (Sec. 5, 34 Stat. 520; 43 U.S.C. 448); March 28, 1908 (Sec. 3, 35 Stat. 52; 43 U.S.C. 333); April 30, 1912 (37 Stat. 106; 43 U.S.C. 334); March 4, 1915 (Sec. 5, 38 Stat. 1161; 43 U.S.C. 335); and February 25, 1925 (43 Stat. 982; 43 U.S.C. 336). The act of June 27, 1906, is applicable only to entries embraced within the exterior limits of some withdrawal or irrigation project under the Reclamation Act of June 17, 1902 (32 Stat. 388).

(b) In addition to the acts cited in this section, extensions of time for making desert-land proofs were authorized by the acts of June 16, 1933 (48 Stat. 274; 43 U.S.C. 256a), July 26, 1935 (49 Stat. 504; 43 U.S.C. 256a), and June 16, 1937 (50 Stat. 303; 43 U.S.C. 256a). Such acts affect only proofs becoming due on or before December 31, 1936. For that reason, the regulations which were issued thereunder have not been included in this chapter.

§ 2522.2 Procedure on applications for extensions of time, where contest is pending.

(a) A pending contest against a desert-land entry will not prevent the allowance of an application for extension of time, where the contest affidavit does not charge facts tending to overcome the prima facie showing of right to such extension. (41 L.D. 603.)

(b) Consideration of an application for extension of time will not be deferred because of the pendency of a contest against the entry in question unless the contest charges be sufficient, if proven, to negative the right of the entryman to an extension of time for making final proof. If the contest charges be insufficient, the application for extension, where regular in all respects, will be allowed and the contest dismissed subject to the right of appeal, but without prejudice to the contestant's right to amend his charges.

§ 2522.3 Act of March 28, 1908.

Under the provisions of the act of March 28, 1908 (35 Stat. 52; 43 U.S.C. 333), the period of 4 years may be extended, in the discretion of the authorized officer, for an additional period not exceeding 3 years, if, by reason of some unavoidable delay in the construction of the irrigating works intended to convey water to the land, the entryman is unable to make proof of reclamation and cultivation required within the 4 years. This does not mean that the period within which proof may be made will be extended as a matter of course for 3 years. Applications for extension under said act will not be granted unless it be clearly shown that the failure to reclaim and cultivate the land within the regular period of 4 years was due to no fault on the part of the entryman but to some unavoidable delay in the construction of the irrigation works for which he was not responsible and could not have readily foreseen. (37 L.D. 332.) It must also appear that he has complied with the law as to annual expenditures and proof thereof.

§ 2522.4 Act of April 30, 1912.

(a) Under the provisions of the act of April 30, 1912 (37 Stat. 106; 43 U.S.C. 334), a further extension of time may be granted for submitting final proof, not exceeding 3 years, where it is shown that, because of some unavoidable delay in the construction of irrigation works intended to convey water to the land embraced in his entry, the claimant is, without fault on his part, unable to make proof of the reclamation and cultivation of said lands within the time limited therefor, but such further extension cannot be granted for a period of more than 3 years nor affect contests initiated for a valid existing reason.

(b) An entryman who has complied with the law as to annual expenditures and proof thereof and who desires to make application for extension of time under the provisions of the act of March 28, 1908, should file with the authorizing officer a statement setting forth fully the facts, showing how and why he has been prevented from making final proof of reclamation and cultivation within the regular period. This statement must be corroborated by two witnesses who have personal knowledge of the facts.

§ 2522.5 Act of February 25, 1925.

Applications for further extension of time under the act of April 30, 1912, and February 25, 1925 (43 Stat. 982; 43 U.S.C. 336), may be made in the same manner, and the same procedure will be followed with respect to such applications as under the act of March 28, 1908, and the act of March 4, 1915 (38 Stat. 1161; 43 U.S.C. 335), as amended.

§ 2522.6 Service fees.

All applications for extension of time made under the acts of March 28, 1908, April 30, 1912, or February 25, 1925, must be accompanied by an application service fee of $10 which will not be returnable.

Subpart 2523—Payments

§ 2523.1 Collection of purchase money and fees; issuance of final certificate.

(a) At the time of making final proof the claimant must pay to the authorizing officer the sum of $1 per acre for each acre of land upon which proof is made. This, together with the 25 cents per acre paid at the time of making the original entry, will amount to $1.25 per acre, which is the price to be paid for all lands entered under the desert land law.

(b) If the entryman is dead and proof is made by anyone for the heirs, no will being suggested in the record, the final certificate should issue to the heirs generally, without naming them; if by anyone for the heirs or devisees, final certificate should issue in like manner to the heirs or devisees.

(c) When final proof is made on an entry made prior to the act of March 28, 1908 (35 Stat. 52; 43 U.S.C. 324, 326, 333), for unsurveyed land, if the land is still unsurveyed and such proof is satisfactory, the authorizing officer will approve same without collecting the final payment of $1 an acre and without issuing final certificate. Fees for reducing the final-proof testimony to writing should be collected and receipt issued therefor if the proof is taken before the authorizing officer. As soon as the plat or plats of any township or townships previously unsurveyed are filed in the proper office the authorizing office will examine his records for the purpose of determining, if possible, whether or not, prior to the passage of the act of March 28, 1908, any desert-land entry of unsurveyed land was allowed in the locality covered by the said plats; and if any such entries are found intact, he will call upon the claimants thereof to file a statement of adjustment, corroborated by two witnesses, giving the correct description, in accordance with the survey of the lands embraced in their respective entries.

(d) If the final proof has been made upon any desert-land entry so adjusted and the records show that such proof has been found satisfactory and no conflicts or other objections are apparent, the manager will allow claimant 60 days within which to make final payment for the land.

[35 FR 9588, June 13, 1970]

§ 2523.2 Amounts to be paid.

No fees or commissions are required of persons making entry under the desert land laws except such fees as are paid to the officers for taking the affidavits and proofs. Unless the entry be perfected under the act of February 14, 1934 (48 Stat. 349; 43 U.S.C. 339), the only payments made to the Government are the original payment of 25 cents an acre at the time of making the application and the final payment of $1 an acre, to be paid at the time of making the final proof. On all final proofs made before the authorizing officer, the claimant must pay to the authorizing officer the costs of reducing the testimony to writing, as determined by the authorizing officer. No proof shall be accepted or approved until all charges have been paid.

[35 FR 9588, June 13, 1970]

Subpart 2524—Desert-Land Entries Within a Reclamation Project

AUTHORITY: Sec. 10, 32 Stat. 390; as amended; 43 U.S.C. 373.

SOURCE: 35 FR 9588, June 13, 1970, unless otherwise noted.

§ 2524.1 Conditions excusing entrymen from compliance with the desert-land laws.

(a) By section 5 of the act of June 27, 1906 (34 Stat. 520, 43 U.S.C. 448), it is provided that any desert-land entryman who has been or may be directly or indirectly hindered or prevented from making improvements on or from reclaiming the lands embraced in his entry, by reason of the fact that such lands have been embraced within the exterior limits of any withdrawal under the Reclamation Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 et seq.) will be excused during the continuance of such hindrance from complying with the provisions of the desert-land laws.

(b) *Persons excused from compliance with the desert-land laws.* Section 5 of the act of June 27, 1906, applies only to persons who have been, directly or indirectly, delayed or prevented, by the creation of any reclamation project, or by any withdrawal of public lands under the reclamation law, from improving or reclaiming the lands covered by their entries.

(c) *Statement required to warrant excuse.* No entryman will be excused under this act from a compliance with all of the requirements of the desert-land law until he has filed in the proper office for the district in which his lands are situated a statement showing in detail all of the facts upon which he claims the right to be excused. This statement must show when the hindrance began, the nature, character, and extent of the same, and it must be corroborated by two disinterested persons, who can testify from their own personal knowledge.

§ 2524.2 Annual proof.

(a) *Extension of time.* Inasmuch as entrymen are allowed 1 year after entry in which to submit the first annual proof of expenditures for the purpose of improving and reclaiming the land entered by them, the privileges of the act of June 27, 1906, are not necessary in connection with annual proofs until the expiration of the years in which such proofs are due. Therefore, if at the time that annual proof is due it can not be made, on account of hindrance or delay occasioned by a withdrawal of the land for the purpose indicated in the act, the applicant will file his statement explaining the delay. As a rule, however, annual proofs may be made, notwithstanding the withdrawal of the land, because expenditures for various kinds of improvements are allowed as satisfactory annual proofs. Therefore an extension of time for making annual proof will not be granted unless it is made clearly to appear that the entryman has been delayed or prevented by the withdrawal from making the required improvements; and, unless he has been so hindered or prevented from making the required improvements, no application for extension of time for making final proof will be granted until after all the yearly proofs have been made.

(b) *When application for extension of time should be filed.* An entryman will not need to invoke the privileges of the act of June 27, 1906, in connection with final proof until such final proof is due, and if at that time he is unable to make the final proof of reclamation and cultivation, as required by law, and such inability is due, directly or indirectly, to the withdrawal of the land on account of a reclamation project, the statement explaining the hindrance and delay should be filed in order that the entryman may be excused for such failure.

§ 2524.3 Time extended to make final proof.

When the time for submitting final proof has arrived and the entryman is unable, by reason of the withdrawal of the land, to make such proof, upon proper showing, he will be excused and the time during which it is shown that he has been hindered or delayed on account of the withdrawal of the land will not be computed in determining the time within which final proof must be made.

§ 2524.4 Beginning of period for compliance with the law.

If, after investigation the irrigation project has been or may be abandoned by the Government, the time for compliance with the law by the entryman shall begin to run from the date of notice of such abandonment of the project and of the restoration to the public domain of the lands which had been withdrawn in connection with the project. If, however, the reclamation project is carried to completion by the Government and a water supply has been made available for the land embraced in such desert-land entry, the entryman must, if he depends on the Government's project for his water supply, comply with all provisions of the reclamation law, and must under the act of June 6, 1930 (46 Stat. 502; 43 U.S.C. 448), relinquish or assign in not less than 2 years after notice all the land embraced in his entry in excess of one farm unit, and upon making final proof and complying with the regulations of the Department applicable to the remainder of the irrigable land of the project and with the terms of payment prescribed in the reclamation law, he shall be entitled to patent as to such retained farm unit, and final water-right certificate containing lien as provided for by the act of August 9, 1912 (37 Stat. 265; 43 U.S.C. 541-546), act of August 26, 1912 (37 Stat. 610; 43 U.S.C. 547), and the act of February 15, 1917 (39 Stat. 920; 43 U.S.C. 541), or to patent without a lien if provision therefor shall have been made as provided for by the act of May 15, 1922 (42 Stat. 541; 43 U.S.C. 511-513).

§ 2524.5 Assignment of desert-land entries in whole or in part.

(a) *Act of July 24, 1912.* Under the act of July 24, 1912 (37 Stat. 200; 43 U.S.C. 449), desert-land entries covering lands within the exterior limits of a Government reclamation project may be assigned in whole or in part, even though water-right application has been filed for the land in connection with the Government reclamation project, or application for an extension of time in which to submit proof on the entry has been submitted, under the act of June 27, 1906 (34 Stat. 520; 43 U.S.C. 448), as amended by the act of June 6, 1930 (46 Stat. 502; 43 U.S.C. 448), requiring reduction of the area of the entry to one farm unit.

(b) *Amendment of farm-unit plat after partial assignment.* Where it is desired to assign part of a desert-land entry which has been designated as a farm unit, application for the amendment of the farm-unit plat should be filed with the official in charge of the project, as in the case of assignments of homestead entries. (See § 2515.5 (a)(3) to (5).) The same disposition of amendatory diagrams will be made and the same procedure followed as provided for assignments of homestead entries.

§ 2524.6 Desert-land entryman may proceed independently of Government irrigation.

Special attention is called to the fact that nothing contained in the act of June 27, 1906 (34 Stat. 520; 43 U.S.C. 448), shall be construed to mean that a desert-land entryman who owns a water right and reclaims the land embraced in his entry must accept the conditions of the reclamation law, but he may proceed independently of the Government's plan of irrigation and acquire title to the land embraced in his desert-land entry by means of his own system of irrigation.

§ 2524.7 Disposal of lands in excess of 160 acres.

Desert-land entrymen within exterior boundaries of a reclamation project who expect to secure water from the Government must relinquish or assign all of the lands embraced in their entries in excess of one farm unit in not less than 2 years after notice through the land office, must reclaim one-half of the irrigable area covered by their water right in the same manner as private owners of land irrigated under a reclamation project, and also comply with the regulations of the Department applicable to the remainder of the irrigable land of the project.

§ 2524.8 Cancellation of entries for nonpayment of water-right charges.

All homestead and desert-land entrymen holding land under the reclamation law must, in addition to paying the water-right charges, reclaim the land as required by the reclamation law. Homestead entrymen must reside upon, cultivate, and improve the lands embraced in their entries for not less than the period required by the homestead laws. Desert-land entrymen must comply with the provisions of the desert-land laws as amended by the reclamation law. Failure to make payment of any water-right charges due for more than 1 year, will render the entry subject to cancellation and the money paid subject to forfeiture, whether water-tight application has been made or not.

PART 2530—INDIAN ALLOTMENTS

Subpart 2530—Indian Allotments: General

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Subpart 2530—Indian Allotments: General

AUTHORITY: R.S. 2478, 34 Stat. 197; 43 U.S.C. 1201, 48 U.S.C. 357.

§ 2530.0-3 Authority.

(a) *General Allotment Act of February 8, 1887.* Section 4 of the General Allotment Act of February 8, 1887 (24 Stat. 389; 25 U.S.C. 334), as amended by the act of February 28, 1891 (26 Stat. 794), and section 17 of the act of June 25, 1910 (36 Stat. 859; 25 U.S.C. 336), provides that where any Indian entitled to allotment under existing laws shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the proper office for the district in which the lands are located, to have the same allotted to him or her and to his or her children in manner as provided by law for allotments to Indians residing upon reservations, and that such allotments to Indians on the public domain shall not exceed 40 acres of irrigable land, or 80 acres of nonirrigable agricultural land or 160 acres of nonirrigable grazing land to any one Indian.

(b) *Act of March 1, 1933.* The act of March 1, 1933 (47 Stat. 1418; 43 U.S.C. 190a) provides that no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah.

(c) *Executive Orders 6910 and 6964, Taylor Grazing Act of June 28, 1934.* Public land withdrawn by Executive Orders 6910 and 6964 of November 26, 1934, and February 5, 1935, respectively, and land within grazing districts established under section 1 of the Taylor Grazing Act of June 28, 1934 (43 U.S.C. 315), is not subject to settlement under Section 4 of the General Allotment Act of February 8, 1887, as amended, until such settlement has been authorized by classification. See Parts 2410, 2420, and 2430 of this chapter.

[35 FR 9589, June 13, 1970, as amended at 37 FR 23184, Oct. 31, 1972]

§ 2530.0-7 Cross reference:

For native allotments in Alaska see Subpart 2561 of this chapter.

[35 FR 9589, June 13, 1970]

§ 2530.0-8 Land subject to allotment.

(a) *General.* (1) The law provides that allotments may include not to exceed 40 acres of irrigable land, 80 acres of nonirrigable agricultural land, or 160 acres of nonirrigable grazing land.

(2) Irrigable lands are those susceptible of successful irrigation at a reason-

able cost from any known source of water supply; nonirrigable agricultural lands are those upon which agricultural crops can be profitably raised without irrigation; grazing lands are those which can not be profitably devoted to any agricultural use other than grazing.

(3) An allotment may be allowed for coal and oil and gas lands, with reservation of the mineral contents to the United States.

[35 FR 9589, June 13, 1970]

Subpart 2531—Applications, Generally

§ 2531.1 Qualifications of applicants.

(a) *General.* An applicant for allotment under the fourth section of the act of February 8, 1887, as amended, is required to show that he is a recognized member of an Indian tribe or is entitled to be so recognized. Such qualifications may be shown by the laws and usages of the tribe. The mere fact, however, that an Indian is a descendant of one whose name was at one time borne upon the rolls and who was recognized as a member of the tribe does not of itself make such Indian a member of the tribe. The possession of Indian blood, not accompanied by tribal affiliation or relationship, does not entitle a person to an allotment on the public domain. Tribal membership, even though once existing and recognized, may be abandoned in respect to the benefits of the fourth section.

(b) *Certificate that applicant is Indian and eligible for allotment.* Any person desiring to file application for an allotment of land on the public domain under this act must first obtain from the Commissioner of Indian Affairs a certificate showing that he or she is an Indian and eligible for such allotment, which certificate must be attached to the allotment application. Application for the certificate must be made on the proper form, and must contain information as to the applicant's identity, such as thumb print, age, sex, height, approximate weight, married or single, name of the Indian tribe in which membership is claimed, etc., sufficient to establish his or her identity with that of the applicant for allotment. Each certificate must bear a serial number, record thereof to be kept in the Indian Office. The required forms may be obtained as stated in § 2531.2(b).

(c) *Heirs of Indian settlers and applicants.* (1) Allotments are allowable only to living persons or those in being at the date of application. Where an Indian dies after settlement and filing of application, but prior to approval, the allotment will upon final approval be confirmed to the heirs of the deceased allottee.

(2) In disposing of pending applications in which the death of the applicant has been reported, the heirs of an applicant who was otherwise qualified at the date of application should be notified that they will be allowed 90 days from receipt of notice within which to submit proof that the applicant personally settled on the land applied for during his or her lifetime, and while the land was open to settlement, and upon failure to submit such proof within the time allowed the application will be finally rejected.

(3) When it is sufficiently shown that an applicant was at the time of death occupying in good faith the land settled on, patent will be issued to his or her heirs without further use or occupancy on the part of such heirs being shown.

(d) *Minor children.* An Indian settler on public lands under the fourth section of the act of February 8, 1887, as amended, is also eligible upon application for allotments made thereunder to his minor children, stepchildren, or other children to whom he stands in loco parentis, provided the natural children are in being at the date of the parent's application, or the other relationship referred to exist at such date. The law only permits one eligible himself under the fourth section to take allotments thereunder on behalf of his minor children or of those to whom he stands in loco parentis. Orphan children (those who have lost both parents) are not eligible for allotments on the public domain unless they come within the last mentioned class. No actual settlement is required in case of allotments to minor children under the fourth section, but the actual settlement of the parent or of a person standing in loco parentis on his own public-land allotment will be regarded as the settlement of the minor children.

(e) *Indian wives.* (1) Where an Indian woman is married to non-Indian not eligible for an allotment under the fourth section of the act of February 8, 1887, as amended, and not a settler or entryman under the general homestead law, her right, and that of the minor children born of such marriage, to allotments on the public domain will be determined without reference to the quantum of Indian blood possessed by such women and her children but solely with reference as to whether they are recognized members of an Indian tribe or are entitled to such membership.

(2) An Indian woman married to an Indian man who has himself received an allotment on the public domain or is entitled to one, or has earned the equitable right to patent on any form of homestead or small holding claim, is not thereby deprived of the right to file an application for herself, provided she is otherwise eligible, and also for her minor children where her husband is for any reason disqualified.

(3) An Indian woman who is separated from her husband who has not received an allotment under the fourth section will be regarded as the head of a family and may file applications for herself and for the minor children under her care.

(4) In every case where an Indian woman files applications for her minor children it must appear that she has not only applied for herself under the fourth section but has used the land in her own application in some beneficial manner.

(f) *Citizenship.* (1) Under section 6 of the act of February 8, 1887 (24 Stat. 390; 25 U.S.C. 349), every Indian born within the territorial limits of the United States, to whom allotments were made under that act, and every Indian who voluntarily takes up his residence separate and apart from any tribe of Indians and adopts the habits of civilized life is declared to be a citizen of the United States.

(2) The act of May 8, 1906 (34 Stat. 182; 8 U.S.C. 3), changed the time when an Indian became a citizen by virtue of the allotment made to him to the time when patent in fee should be issued on such an allotment.

(3) The act of June 2, 1924 (43 Stat. 253, 8 U.S.C. 3), conferred citizenship on all noncitizen Indians born within the Territorial limits of the United States, but expressly reserved to them all rights to tribal or other property. These rights include that of allotment on the public land, if qualified.

[35 FR 9589, June 13, 1970, as amended at 37 FR 23185, Oct. 31, 1972]

§ 2531.2 Petition and applications.

(a) Any person desiring to receive an Indian allotment (other than those seeking allotments in national forests, for which see Subpart 2533 of this part) must file with the authorized officer, an application, together with a petition on forms approved by the Director, properly executed, together with a certificate from the authorized officer of the Bureau of Indian Affairs that the person is Indian and eligible for allotment, as specified in § 2531.1(b). However, if the lands described in the application have been already classified and opened for disposition under the provisions of this part, no petition is required. The documents must be filed in accordance with the provisions of § 1821.2 of this chapter.

The petition and the statement attached to the application for certificate must be signed by the applicant.

(b) Blank forms for petitions and applications may be had from any office of the Bureau of Indian Affairs, or from land offices of the Bureau of Land Management.

[35 FR 9590, June 13, 1970]

§ 2531.3 Effect of application.

(a) Where an allotment application under the fourth section of the Act of February 8, 1887, as amended, 25 U.S.C. 334 (is not accompanied by the requisite certificate from the Bureau of Indian Affairs showing the applicant to be eligible for an allotment, and the applicant is given time to furnish such certificate, the application does not segregate the land, and other applications therefor may be received and held to await final action on the allotment application.

(b) Where an allotment application is approved by the authorized officer, it operates as a segregation of the land, and subsequent application for the same land will be rejected.

[37 FR 23185, Oct. 31, 1972]

Subpart 2532—Allotments

§ 2532.1 Certificate of allotment.

(a) When the authorizing officer approves an application for allotment, he will issue to the applicant a "certificate of allotment", on a prescribed form, showing the name in full of the applicant, post office address, name of the tribe in which membership is claimed, serial number of the certificate issued by the Commissioner of Indian Affairs, and a description of the land allotted.

(b) Where the application under investigation is that of a single person over 21 years of age, or of the head of a family, report will also be made as to the character of the applicant's settlement and improvements. A similar report will be made on applications filed in behalf of minor children as to the character of the settlement and improvements made by the parent, or the person standing in loco parentis, on his or her own allotment under the fourth section.

[35 FR 9591, June 13, 1970]

§ 2532.2 Trust patent.

(a) To enable an Indian allottee to demonstrate his good faith and intention, the issuance of trust patent will be suspended for a period of 2 years from date of settlement; but in those cases where that period has already elapsed at the time of adjudicating the allotment application, and when the evidence either by the record or upon further investigation in the field, shows the allottee's good faith and intention in the matter of his settlement, trust patents will issue in regular course. Trust patents in the suspended class, when issued will run from the date of suspension.

(b) In the matter of fourth-section applications filed prior to the regulations in this part, where, by the record or upon further investigation in the field, it appears that such settlement has not been made as is contemplated by the regulations, such applications will not be immediately rejected, but the applicant will be informed that 2 years will be allowed within which to perfect his settlement and to furnish proof thereof, whereupon his application will be adjudicated as in other cases.

[35 FR 9591, June 13, 1970]

Subpart 2533—Allotments Within National Forests

Source: 35 FR 9591, June 13, 1970, unless otherwise noted.

§ 2533.0-3 Authority.

By the terms of section 31 of the act of June 25, 1910 (36 Stat. 863; 25 U.S.C. 337), allotments under the fourth section of the act of February 8, 1887, as amended, may be made within national forests.

§ 2533.0-8 Land subject to allotment.

An allotment under this section may be made for lands containing coal and oil and gas with reservation of the mineral contents to the United States, but not for lands valuable for metalliferous minerals. The rules governing the conduct of fourth-section applications under the act of February 8, 1887 as amended, apply equally to applications under said section 31.

§ 2533.1 Application.

An Indian who desires to apply for an allotment within a national forest under this act must submit the application to the supervisor of the particular forest affected, by whom it will be forwarded with appropriate report, through the district forester and Chief, Forest Service, to the Secretary of Agriculture, in order that he may determine whether the land applied for is more valuable for agriculture or grazing than for the timber found thereon.

§ 2533.2 Approval.

(a) Should the Secretary of Agriculture decide that the land applied for, or any part of it, is chiefly valuable for the timber found thereon, he will transmit the application to the Secretary of the Interior and inform him of his decision in the matter. The Secretary of the Interior will cause the applicant to be informed of the action of the Secretary of Agriculture.

(b) In case the land is found to be chiefly valuable for agriculture or grazing, the Secretary of Agriculture will note that fact on the application and forward it to the Commissioner of Indian Affairs.

(c) If the Commissioner of Indian Affairs approves the application, he will transmit it to the Bureau of Land Management for issuance of a trust patent.

[35 FR 9591, June 13, 1970, as amended at 41 FR 29122, July 15, 1976]

PART 2540—COLOR-OF-TITLE AND OMITTED LANDS

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Subpart 2540—Color-of-Title: Authority and Definitions

§ 2540.0-3 Authority.

(a) *Act of December 22, 1928.* The act of December 22, 1928 (45 Stat. 1069), as amended by the act of July 28, 1953 (67 Stat. 227; 43 U.S.C. 1068, 1068a), authorizes the issuance of patent for not to exceed 160 acres of public lands held under claim or color of title of either of the two classes described in § 2540.0-5(b) upon payment of the sale price of the land.

(b) *Act of February 23, 1932.* The act of February 23, 1932 (47 Stat. 53; 43 U.S.C. 178), authorizes the Secretary of the Interior in his discretion to issue patents, upon the payment of $1.25 per acre, for not more than 160 acres of public land, where such land is contiguous to a Spanish or Mexican land grant, and where such land has been held in good faith and in peaceful, adverse possession by a citizen of the United States, his ancestors or grantors, for more than 20 years under claim or color of title and where valuable improvements have been placed on such land, or some part thereof has been reduced to cultivation. The act further provides that where the land is in excess of 160 acres, the Secretary may determine the 160 acres to be patented under the act. Under the said act the coal and all other minerals in the land are reserved to the United States and shall be subject to sale or disposal under applicable leasing and mineral land laws of the United States.

(c) *Act of September 21, 1922.* The act of September 21, 1922 (42 Stat. 992; 43 U.S.C. 992), authorizes the Secretary of the Interior in his judgment and discretion to sell at an appraised price, any of those public lands situated in Arkansas, which were originally erroneously meandered and shown upon the official plats as water-covered areas, and which are not lawfully appropriated by a qualified settler or entryman claiming under the public land laws, to any citizen who in good faith under color of title or claiming as a riparian owner, has prior to September 21, 1922, placed valuable improvements on such land or reduced some part thereof to cultivation.

(d) *Act of February 19, 1925.* The act of February 19, 1925 (43 Stat. 951; 43 U.S.C. 993), authorizes the Secretary of the Interior in his judgment and discretion to sell at an appraised price, any of those public lands situated in Louisiana, which were originally erroneously meandered and shown upon the official plats as water-covered areas and which are not lawfully appropriated by a qualified settler or entryman claiming under the public land laws, to any citizen who or whose ancestors in title in good faith under color of title or claiming as a riparian owner, has prior to February 19, 1925, placed valuable improvements upon or reduced to cultivation any of such lands. The coal, oil, gas, and other minerals in such lands are reserved to the United States.

(e) *Act of August 24, 1954.* The act of August 24, 1954 (68 Stat. 789), directs the Secretary of the Interior to issue patents for public lands which lie between the meander line of an inland lake or river in Wisconsin as originally surveyed and the meander line of that lake or river as subsequently resurveyed, under certain terms and conditions. The act of February 27, 1925 (43 Stat. 1013 43 U.S.C. 994), authorized the Secretary of the Interior to sell such public lands under certain other terms and conditions. These acts are cited as "the act of 1954" and "the act of 1925," respectively, in §§ 2545.1 to 2545.4.

(f) *Act of May 31, 1962.* (1) The act of May 31, 1962 (76 Stat. 89), hereafter referred to as "the Act", authorizes the Secretary of the Interior, in his discretion, to sell at not less than their fair market value any of those lands in the State of Idaho, in the vicinity of the Snake River or any of its tributaries, which have been, or may be, found upon survey to be omitted public lands of the United States, and which are not within the boundaries of a national forest or other Federal reservation and are not lawfully appropriated by a qualified settler or entryman claiming under the public land laws, or are not used and occupied by Indians claiming by reason of aboriginal rights or are not used and occupied by Indians who are eligible for an allotment under the laws pertaining to allotments on the public domain.

(2) The Act provides that in all patents issued under the Act, The Secretary of the Interior (i) shall include a reservation to the United States of all the coal, oil, gas, oil shale, phosphate, potash, sodium, native asphalt, solid and semisolid bitumen, and bitumen rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried), together with the right to prospect for, mine, and remove the same; and (ii) may reserve the right of access to the public through the lands and such other reservations as he may deem appropriate and consonant with the public interest in preserving public recreational values in the lands.

(3) The Act further provides that the Secretary of the Interior shall determine the fair market value of the lands by appraisal, taking into consideration any reservations specified pur-

suant to paragraph (f)(2) of this section and excluding, when sales are made to preference-right claimants under section 2 of the Act, any increased values resulting from the development or improvement thereof for agricultural or other purposes by the claimant or his predecessors in interest.

(4) The Act grants a preference right to purchase lands which are offered by the Secretary of the Interior for sale under the Act to any citizen of the United States (which term includes corporations, partnerships, firms, and other legal entities having authority to hold title to lands in the State of Idaho) who, in good faith under color of title or claiming as a riparian owner has, prior to March 30, 1961, placed valuable improvements upon, reduced to cultivation or occupied any of the lands so offered for sale, or whose ancestors or predecessors in title have taken such action.

(g) The Federal Land Policy and Management Act of 1976.

(1) Section 211 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721), authorizes the Secretary of the Interior in his discretion to sell at not less than fair market value to the occupant thereof any omitted lands which, after survey, are found to have been occupied and developed for a 5-year period prior to January 1, 1975.

(2) The Act provides that all such conveyances under the Act must be in the public interest and will serve objectives which outweigh all public objectives and values served by retaining such lands in Federal ownership.

(3) Section 208 of the Act (43 U.S.C. 1718) further provides that the Secretary of the Interior shall issue patents subject to such terms, convenants, conditions, and reservations as deemed necessary to insure proper land use and protection of the public interest.

(4) Section 209 of the Act (43 U.S.C. 1719) provides that all patents issued under the Act shall reserve to the United States all minerals in the lands, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary may prescribe, except as provided by section 209(b) of the Act.

[35 FR 9561, June 13, 1970, as amended at 44 FR 41793, July 18, 1979]

§ 2540.0-5 Definition.

(a) "The act", when used in this section means the act of December 22, 1928 (45 Stat. 1069; 43 U.S.C. 1068, 1068a), as amended by the act of July 28, 1953 (67 Stat. 227, 43 U.S.C. 1068a).

(b) The claims recognized by the act will be referred to in this part as claims of class 1, and claim of class 2. A claim of class 1 is one which has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. A claim of class 2 is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application, during which time they have paid taxes levied on the land by State and local governmental units. A claim is not held in good faith where held with knowledge that the land is owned by the United States. A claim is not held in peaceful, adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes.

[35 FR 9592, June 13, 1970]

Subpart 2541—Color-of-Title Act

Source: 35 FR 9592, June 13, 1970, unless otherwise noted.

§ 2541.1 Who may apply.

Any individual, group, or corporation authorized to hold title to land in the State and who believes he has a valid claim under color of title may make application.

§ 2541.2 Procedures.

(a) *Application.* (1) An application for a claim of class 1 or of class 2 must be filed in duplicate on a form approved by the Director. It must be filed in accordance with the provisions of § 1821.2 of this chapter.

(2) Every application must be accompanied by a filing fee of $10, which will be nonreturnable.

(3) The application must be in typewritten form, or in legible handwriting, and it must be completely executed and signed by the applicant.

(4) Every applicant must furnish information required in the application form concerning improvements, cultivation, conveyances of title, taxes, and related matters.

(b) *Description of lands applied for.* Application under the act may be made for surveyed or unsurveyed lands. If unsurveyed, the description must be sufficiently complete to identify the location, boundary, and area of the land and, if possible, the approximate description or location of the land by section, township, and range. If unsurveyed land is claimed, final action will be suspended until the plat of survey has been officially filed.

(c) *Presentation and verification of factual statements.* (1) Information relating to all record and nonrecord conveyances, or to nonrecord claims of title, affecting the land shall be itemized on a form approved by the Director. The statements of record conveyances must be certified by the proper county official or by an abstractor. The applicant may be called upon to submit documentary or other evidence relating to conveyances or claims. Abstracts of title or other documents which are so requested will be returned to the applicant.

(2) Applicants for claims of class 2 must itemize all information relating to tax levies and payments on the land on a form approved by the Director which must be certified by the proper county official or by an abstractor.

§ 2541.3 Patents.

(a) Any applicant who satisfied all requirements for a claim of class 1 or class 2 commencing not later than January 1, 1901, to the date of application and who so requests in the application will receive a patent conveying title to all other minerals except:

(1) Any minerals which, at the time of approval of the application, are embraced by an outstanding mineral lease or

(2) Any minerals for which the lands have been placed in a mineral withdrawal.

All other patents will reserve all minerals to the United States.

(b) All mineral reservations will include the right to prospect for, mine, and remove the same in accordance with applicable law.

(c) The maximum area for which patent may be issued for any claim under the act is 160 acres. Where an area held under a claim or color of title is in excess of 160 acres, the Secretary has authority under the act to determine what particular subdivisions not exceeding 160 acres, may be patented.

§ 2541.4 Price of land; payment.

(a) *Price of land.* The land applied for will be appraised on the basis of its fair market value at the time of appraisal. However, in determination of the price payable by the applicant, value resulting from improvements or development by the applicant or his predecessors in interest will be deducted from the appraised price, and consideration will be given to the equities of the applicant. In no case will the land be sold for less than $1.25 per acre.

(b) *Payment.* Applicant will be required to make payment of the sale price of the land within the time stated in the request for payment.

§ 2541.5 Publication; protests.

(a) The applicant will be required to publish once a week for four consecutive weeks in accordance with § 1824.3 of this chapter, at his expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file in the office specified in § 2541.1-2(a) their objections to the issuance of patent under the application. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service.

(b) The applicant must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

Subpart 2542—Color-of-Title Claims, New Mexico, Contiguous to Spanish or Mexican Grants

SOURCE: 35 FR 9593, June 13, 1970 unless otherwise noted.

§ 2542.1 Application.

(a) *Where filed; purchase price required.* Applications under the act of February 23, 1932 must be filed with the authorizing officer of the proper office at Santa Fe, New Mexico, and should be accompanied by payment of the purchase price of the land applied for at the rate of $1.25 per acre.

(b) *Form.* No special form of application is provided. The application should be in typewritten form or in legible handwriting and must be corroborated by at least two disinterested persons having actual knowledge of the facts alleged therein.

(c) *Contents of application.* Applicants desiring to take advantage of the benefits of the act of February 23, 1932, must show the following matters in their applications:

(1) Full name and post-office address of the applicant and whether married or single.

(2) Description of the land for which patent is desired. If surveyed, the land should be described by legal subdivision, section, township, and range. If unsurveyed, the land should be described by metes and bounds.

(3) That the land applied for is contiguous to a Spanish or Mexican land grant. The grant should be identified by name, number, patentee or description of land involved. The points or places at which the land applied for is contiguous to the Spanish or Mexican land grant, must be clearly shown.

(4) That possession of the lands applied for has been maintained for more than 20 years under claim or color of title. If the applicant is claiming as a record owner, he or she will be required to file an abstract of title, certified to by a competent abstractor, showing the record of all conveyances of the land up to the date of the filing of the application. If the applicant is not a record owner and no abstract of title can be furnished, statements must be filed, setting forth the names of all mesne possessors of the land, the periods held by each, giving the dates and manner of acquiring possession of the land, and the acts of dominion exercised over the land by each possessor.

(5) That the lands have been held in good faith and in peaceful, adverse possession. The applicant should show whether or not he and his predecessors in interest have paid taxes on the lands and for what periods of time, and whether any consideration was paid for any conveyances of the land. It should further be shown whether there is any person who is claiming the land adversely to the applicant, and if there be such, the name and address of such adverse claimant should be furnished.

(6) Whether or not valuable improvements have been erected upon the land applied for and whether or not any part of such land has been reduced to cultivation. If improvements have been made, the nature, the value, the exact location, and the time of erection thereof, should be fully disclosed together with the identity of the one who was responsible for erecting such improvements. If any of the land has been reduced to cultivation, the subdivision so claimed to have been reduced must be identified and the amount and nature of the cultivation must be set forth, together with the dates thereof.

§ 2542.2 Evidence required.

(a) *Citizenship.* The applicant must furnish a statement showing whether such applicant is a native-born or naturalized citizen of the United States. In the event an applicant is a naturalized citizen, the statement should show the date of the alleged naturalization or declaration of intention, the title and location of the court in which instituted, and when available, the number of the document in question, if the proceeding has been had since September 26, 1906. In addition, in cases of naturalization prior to September 27, 1906, there should be given the date and place of the applicant's birth and the foreign country of which the applicant was a citizen or subject. In case the applicant is a corporation, a certified copy of the articles of incorporation should be filed.

(b) *Acreage claimed.* The applicant in the statement required under paragraph (a) of this section must show that the land claimed is not a part of a claim which embraced more than 160 acres on February 23, 1932. If the land claimed is part of a claim containing more than 160 acres, a full disclosure of all facts concerning the larger claim must be furnished.

§ 2542.3 Publication and posting of notice.

(a) If upon consideration of the application it is determined that the applicant is entitled to purchase the land applied for, the applicant will be required to publish notice of the application in a newspaper of general circulation in the county wherein the land applied for is situated. Notice for publication shall be issued in the following form:

Land Office,
Santa Fe, New Mexico.

Notice is hereby given that ——————
(Name of applicant) of ——————
(Address) has filed application
——————————————
(Number and land office) under the act of February 23, 1932 (47 Stat. 53), to purchase —————————— (Land) Sec.——, T.——, R.——, ———— Mer., claiming under —————— (Ground of claim).

The purpose of this notice is to allow all persons having bona fide objection to the proposed purchase, an opportunity to file their protests in this office on or before

———— ——
(Date)

——————
(Manager)

(b) The notice shall be published at the expense of the applicant and such publication shall be made once each week for a period of five consecutive weeks. A copy of the notice will be posted in the proper office during the entire period of publication. The applicant must file evidence showing that publication has been had for the required time, which evidence must consist of the statement of the publisher, accompanied by a copy of the notice as published.

§ 2542.4 Patent.

(a) Upon submission of satisfactory proof of publication and the expiration of the time allowed for the filing of objections against the application, if there be no protest, contest or other objection against the application, patent will then be issued by the authorizing officer.

(b) There will be incorporated in patents issued on applications under the above act, the following:

> Excepting and reserving, however, to the United States, the coal and all other minerals in the land so patented, together with the right of the United States or its permittees, lessees, or grantees, to enter upon said lands for the purpose of prospecting for and mining such deposits as provided for under the act of February 23, 1932 (47 Stat. 53).

Subpart 2543—Erroneously Meandered Lands, Arkansas

SOURCE: 35 FR 9593, June 13, 1970, unless otherwise noted.

§ 2543.1 Applications.

(a) Applications to purchase under the act of September 21, 1922, must be signed by the applicant in the State of Arkansas. Such applications had to be filed within 90 days from the date of the passage of this act, if the lands had been surveyed and plats filed, otherwise they must be filed within 90 days from the filing of such plats. The applicant must show that he is either a native-born or naturalized citizen of the United States, and, if naturalized, file record evidence thereof; must describe the land which he desires to purchase, together with the land claimed as the basis of his preference right to the lands applied for if he applies as a riparian owner, or if claiming otherwise, under what color of title his claim is based, and that the applied-for lands are not lawfully appropriated by a qualified settler or entryman under the public land laws, nor in the legal possession of any adverse applicant; the kind, character, and value of the improvements on the land covered by the application; when they were placed thereon; the extent of the cultivation had, if any, and how long continued. This application must be supported by the statements of two persons having personal knowledge of the facts alleged in the application.

(b) All applications to purchase under the act must be accompanied by an application service fee of $10 which will not be returnable.

§ 2543.2 Appraisal of land.

When an application is received it will be assigned for investigation and appraisement of the land in accordance with the provisions of the act of September 21, 1922.

§ 2543.3 Purchase price required.

If upon consideration of the application it shall be determined that the applicant is entitled to purchase the lands applied for, the applicant will be notified by registered mail that he must within 30 days from service of notice deposit the appraised price, or thereafter, and without further notice, forfeit all rights under his application.

§ 2543.4 Publication and posting.

Upon payment of the appraised price a notice of publication will be issued. Such notice shall be published at the expense of the applicant in a designated newspaper of general circulation in the vicinity of the lands once a week for five consecutive weeks immediately prior to the date of sale, but a sufficient time should elapse between the date of last publication and date of sale to enable the statement of the publisher to be filed. The notice will advise all persons claiming adversely to the applicant that they should file any objections or protests against the allowance of the application within the period of publication, otherwise the application may be allowed. Any objections or protests must be corroborated, and a copy thereof served upon the applicant. The Bureau of Land Management will cause a notice similar to the notice for publication to be posted in such office, during the entire period of publication. The publisher of the newspaper must file in the Bureau of Land Management prior to the date fixed by the sale evidence that publication has been had for the required period, which evidence must consist of the statement of the publisher, accompanied by a copy of the notice published.

§ 2543.5 Patent.

Upon submission of satisfactory proof, if no protest or contest is pending, patent will be issued.

Subpart 2544—Erroneously Meandered Lands, Louisiana

SOURCE: 35 FR 9594, June 13, 1970, unless otherwise noted.

§ 2544.1 Applications.

(a) Applications to purchase under the act of February 19, 1925, must be signed by the applicant in the State of Louisiana. Such applications had to be filed within 90 days from the passage of this act, if the lands had been surveyed and plats filed, otherwise they must be filed within 90 days from the filing of such plat. The applicant must show that he is either a native-born or a naturalized citizen of the United States, and, if naturalized, file record evidence thereof; must describe the land which he desires to purchase, together with the land claimed as the basis of his preference right to the lands applied for it he applies as a riparian owner, or if claiming otherwise, under what color of the title his claim is based; in other words, a complete history of the claim, and that the lands applied for are not lawfully appropriated by a qualified settler or entryman under the public land laws, nor in the legal possession of any adverse applicant; the kind, character, and value of the improvements on the land covered by the application; when they were placed thereon; the extent of the cultivation, if any, and how long continued. Such application must be supported by the statement of at least two persons having personal knowledge of the facts alleged in the application.

(b) All applications to purchase under the act must be accompanied by an application service fee of $10 which will not be returnable.

§ 2544.2 Appraisal of land.

When an application is received it will be assigned for investigation and appraisement of the land in accordance with the provisions of the act.

§ 2541.3 Notice to deposit purchase price.

If, upon consideration of the application, it shall be determined that the applicant is entitled to purchase the lands applied for, the applicant will be notified, by registered mail, that he must within 6 months from receipt of notice deposit the appraised price of the land or else forfeit all his rights under his application.

§ 2541.4 Publication and posting.

Upon payment of the appraised price of the land the Bureau will issue notice of publication. Such notice shall be published at the expense of the applicant in a designated newspaper of general circulation in the vicinity of the lands, once a week for five consecutive weeks. In accordance with § 1824.3 of this chapter, immediately prior to the date of sale, but a sufficient time shall elapse between the date of the last publication and the date of sale to enable the statement of the publisher to be filed. The notice will advise all persons claiming adversely to the applicant that they should file any objections or protests against the allowance of the application within the period of publication, otherwise the application may be allowed. Any objections or protests must be corroborated, and a copy thereof served upon the applicant. The Bureau will also cause a copy of such notice of publication to be posted in such office during the entire period of publication. The applicant must file in the Bureau prior to the date fixed for the sale evidence that publication has been had for the required period, which evidence must consist of the statement of the publisher accompanied by a copy of the notice so published.

§ 2541.5 Patent.

Upon the submission of satisfactory proof, the Bureau will, if no protest or contest is pending, issue patent, such patent to contain a stipulation that all the minerals in the lands described in the application are reserved to the United States with the right to prospect for, mine and remove same.

Subpart 2545—Erroneously Meandered Lands, Wisconsin

SOURCE: 35 FR 9594, June 13, 1970, unless otherwise noted.

§ 2545.1 Qualifications of applicants.

(a) To qualify under the act of 1954, a person, or his predecessors in interest, (1) must have been issued, prior to January 21, 1953, a patent for lands lying along the meander line as originally determined, and (2) must have held in good faith and in peaceful, adverse possession since the date of issuance of said patent adjoining public lands lying between the original meander line and the resurveyed meander line.

(b) To qualify under the act of 1925, a person must either (1) be the owner in good faith of land, acquired prior to February 27, 1925, shown by the official public land surveys to be bounded in whole or in part by such public lands or (2) be a citizen of the United States who, in good faith under color of title or claiming as a riparian owner, had, prior to February 27, 1925, placed valuable improvements upon or reduced to cultivation any of such public lands.

§ 2545.2 Applications.

(a) Claimants under the act of 1925 have a preferred right of application for a period of 90 days from the date of filing of the plat of survey of lands claimed by them. Applications for public lands under the act of 1954 must be filed within 1 year after August 24, 1954, or 1 year from the date of the official plat or resurvey, whichever is later. All applications must be filed in the proper office (see § 1821.2-1 of this chapter).

(b) Every application must be accompanied by a filing fee of $10, which is not returnable.

(c) No particular form is required but the applications must be typewritten or in legible handwriting and must contain the following information:

(1) The name and post office address of the applicant.

(2) The legal description and acreage of the public lands claimed or desired.

(3) The legal description of the lands owned by the applicant, if any, adjoining the public lands claimed or desired. If the claim is based on ownership of such adjoining lands, the application must be accompanied by a certificate from the proper county official or by an abstractor, showing the date of acquisition of the lands by the applicant and that the applicant owns the lands in fee simple as of the date of application.

(4) If the applicant is a color-of-title applicant under the act of 1925, a statement whether or not the applicant is a citizen of the United States.

(5) If the application is based on color of title or riparian claim under the act of 1925, a statement fully disclosing the facts of the matter; or if the application is based on peaceful, adverse possession under the act of 1954, a similar statement showing peaceful, adverse possession by the applicant, or his predecessors in interest, since the issuance of the patent to the lands adjoining the claimed lands.

(6) A statement showing the improvements, if any, placed on the public lands applied for including their location, nature, present value, date of installation, and the names of the person or persons who installed them.

(7) A statement showing the cultivation, if any, of the lands applied for, including the nature, location, and dates of such cultivation.

(8) The names and post office addresses of any adverse claimants, settlers, or occupants of the public lands applied for or claimed.

(9) The names and post office addresses of at least two disinterested persons having knowledge of the facts relating to the applicant's claim.

(10) A citation of the act under which the application is made.

§ 2545.3 Publication and protests.

(a) The applicant will be required to publish once a week for five consecutive weeks in accordance with § 1824.3 of this chapter, at his expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file with the Bureau of Land Management, Washington, D.C., their objections to issuance of patent under the application. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service.

(b) The applicant must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

§ 2545.4 Price of land; other conditions.

(a) Persons entitled to a patent under the act of 1954 must, within 30 days after request therefor, pay, under the same terms and conditions, the same price per acre as was paid for the land included in their original patent.

(b) Persons entitled to a patent under the act of 1925, within 30 days after request therefor, must pay the appraised price of the lands, which price will be the value of the lands as of the date of appraisal, exclusive of any increased value resulting from the development or improvement of the lands for agricultural purposes by the applicant or his predecessors in interest but inclusive of the stumpage value of any timber cut or removed by them.

Subpart 2546—Snake River, Idaho, Omitted Lands

SOURCE: 35 FR 9595, June 13, 1970, unless otherwise noted.

§ 2546.1 Offers of lands for sale.

Before any lands may be sold under the Act, the authorized officer of the Bureau of Land Management shall publish in the FEDERAL REGISTER and in at least one newspaper of general circulation within the State of Idaho a notice that the lands will be offered for sale, which notice shall specify a period of time not less than 30 days in duration during which citizens may file with the proper office at Boise, Idaho, a notice of their intention to apply to purchase all or part of the lands as qualified preference-right claimants.

§ 2546.2 Applications for purchase.

(a) All citizens who file a notice of intention in accordance with § 2546.1 within the time period specified in the published notice or any amendment thereof will be granted by the authorized officer a period of time not less than 30 days in duration in which to file, in duplicate with the Authorizing officer of the Boise State Office, their applications to purchase lands as preference-right claimants.

(b) Every application must be accompanied by a filing fee of $10, which is not returnable.

(c) No particular form is required but the applications must be typewritten or in legible handwriting and must contain the following information:

(1) The name and post office address of the claimant.

(2) The description and acreage of the public lands claimed or desired.

(3) The description of the lands owned by the applicant, if any, adjoining the public lands claimed or desired accompanied by a certificate from the proper county official or by an abstractor or by an attorney showing the date of acquisition of the lands by the applicant and that the applicant owns the lands in fee simple as of the date of application.

(4) A statement showing that the claimant is a citizen of the United States, as defined in paragraph (4) of § 2540.0-3(f).

(5) A statement giving the basis for color of title or claim of riparian ownership.

(6) A statement showing the improvements, if any, placed on the public lands applied for including their location, nature, present value, date of installation, and the names of the person or persons who installed them.

(7) A statement showing the cultivation and occupancy, if any, of the lands applied for, including the nature, location, and date of such cultivation and occupancy.

(8) The names and post office addresses of any adverse claimants, settlers, or occupants of the public lands claimed.

(9) The names and addresses of at least two disinterested persons having knowledge of the facts relating to the applicant's claim.

(10) A citation of the act under which the application is made.

§ 2546.3 Payment and publication.

(a) Before lands may be sold to a qualified preference-right claimant, the claimant will be required to pay the purchase price of the lands and will be required to publish once a week for four consecutive weeks, at his expense, in a designated newspaper and in a designated form, a notice allowing all persons having objections to file with the Authorizing officer of the State Office at Boise, Idaho, their objections to issuance of patent to the claimant. A protestant must serve on the claimant a copy of the objections and must furnish the Authorizing officer with evidence of such service.

(b) Among other things, the notice will describe the lands to be patented, state the purchase price for the lands and the reservations, if any, to be included in the patent to preserve public recreational values in the lands.

(c) The claimant must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

§ 2546.4 Public auctions.

(a) The authorized officer may sell under the Act at public auction any lands for which preference-claimants do not qualify for patents under the regulations of § 2540.0-3(f) and Subpart 2546.

(b) Lands will be sold under this section at not less than their appraised fair market value at the time and place and in the manner specified by the authorized officer in a public notice of the sale.

(c) Bids may be made by the principal or his agent, either personally at the sale or by mail.

(d) A bid sent by mail must be received at the place and within the time specified in the public notice. Each such bid must clearly state (1) the name and address of the bidder and (2) the specified tract, as described in the notice for which the bid is made. The envelope must be noted as required by the notice.

(e) Each bid by mail must be accompanied by certified or cashier's check, post office money order or bank draft for the amount of the bid.

(f) The person who submits the highest bid for each tract at the close of bidding, but not less than the minimum price, will be declared the purchaser.

Subpart 2547—Omitted Lands—General

AUTHORITY: Sec. 211 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721 and 1740).

SOURCE: 44 FR 41793, July 18, 1979, unless otherwise noted.

§ 2547.1 Qualifications of applicants.

(a) Any person authorized to hold title to land in the State may make application under section 211 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721). For regulations on conveyances of omitted lands and unsurveyed islands to State and local governments see Subpart 2742 of this title.

(b) The applicant shall be a citizen of the United States, or in the case of corporation, shall be organized under the laws of the United States or any State thereof.

(c) The applicant shall have occupied and developed the lands for a 5-year period prior to January 1, 1975.

[44 FR 41793, July 18, 1979; 44 FR 55876, Sept. 28, 1979]

§ 2547.2 Procedures; applications.

(a) The description of the omitted lands applied for shall be sufficiently complete to identify the location, boundary, and area of the land, including, if possible, the legal description of the land by section or fractional section, township, range, meridian and State.

(b) Each application shall be accompanied by a filing fee of $50 that is nonreturnable. The application shall be filed in accordance with the provisions of § 1821.2 of this title.

(c) No special form of application is required. The application shall be typewritten or in legible handwriting and shall contain the following information:

(1) The full name and legal mailing address of the applicant.

(2) The description and acreage of the public lands claimed.

(3) A statement showing that the applicant is qualified or authorized to hold title to land in the State, is a citizen of the United States, and in the case of a corporation, is organized under the laws of the United States or any State thereof.

(4) A statement describing how the applicant has satisfied the requirements of the statute.

(5) A statement describing the nature and extent of any developments made to the lands applied for and describing the period and type of any occupancy of the land.

(6) The names and legal mailing addresses of any known adverse claimants or occupants of the applied for lands.

(7) A citation of the Act under which the application is being made.

§ 2547.3 Price of land; payment.

(a) The land applied for shall be appraised for fair market value at the time of appraisal. However, in determination of the price payable by the applicant, value resulting from development and occupation by the applicant or his predecessors in interest shall be deducted from the appraised price.

(b) The applicant shall also be required to pay administrative costs, including:

(1) The cost of making the survey,

(2) The cost of appraisal, and

(3) The cost of making the conveyance.

(c) The applicant shall be required to make payment of the sale price and administrative costs within the time stated in the requests for payment or any extensions granted thereto by the authorized officer.

§ 2547.4 Publication and protests.

(a) The applicant shall be required to publish a notice of the application once a week for five consecutive weeks in accordance with § 1824.3 of this title, in a designated newspaper and in a designated form. All persons claiming the land adversely may file with the State Office of the Bureau of Land Management in which the lands are located, their objections to issuance of patent under the application. A protestant shall serve on the applicant a copy of the objections and furnish evidence of such service.

(b) The applicant shall file at the appropriate BLM office a statement of the publisher, accompanied by a copy of the notice published, showing that the publication has been made for the required time.

§ 2547.5 Disposal considerations.

(a) Disposal under this provision shall not be made until:

(1) It has been determined by the authorized officer that such conveyance is in the public interest and will serve objectives which outweigh all public objectives and values which would be served by retaining such lands in Federal ownership.

(2) The relevant State government, local government, and areawide planning agency designated under section 204 of the Demonstration Cities and Metropolitan Act of 1966 (80 Stat. 1255, 1262), and/or Title IV of the Intergovernmental Cooperation Act of 1968 (82 Stat. 1098, 1103-4) have notified the authorized officer as to the consistency of such conveyance with applicable State and local government land use plans and programs.

(3) The plat of survey has been officially filed.

§ 2547.6 Lands not subject to disposal under this subpart.

This subpart shall not apply to any lands within the National Forest System, defined in the Act of August 17, 1974 (16 U.S.C. 1601), the National Park System, the National Wildlife Refuge System, and the National Wild and Scenic Rivers System.

§ 2547.7 Coordination with State and local governments.

At least 60 days prior to offering land for sale, the authorized officer shall notify the Governor of the State within which the lands are located and the head of the governing body of any political subdivision of the State having zoning or other land use regulatory jurisdiction in the geographical area within which the lands are located that the lands are being offered for sale. The authorized officer shall also promptly notify such public officials of the issuance of the patent for such lands.

PART 2550—MINING CLAIM OCCUPANCY ACT

NOTE: Act expired but regulations retained for adjudication of pending applications.

Subpart 2550—Mining Claim Occupancy Act: General

Sec.
2550.0-2 Objectives.
2550.0-3 Authority.
2550.0-5 Definitions.
2550.0-7 Cross reference.

Subpart 2551—Mining Claim Occupancy

2551.1 Petitions.
2551.2 Applications.
2551.3 Offers to convey an interest in the lands applied for.
2551.4 Offers of alternate tracts.

Subpart 2550—Mining Claim Occupancy Act: General

AUTHORITY: Secs. 1-4, 76 Stat. 1127, R.S. 453, as amended, R.S. 2478, sec. 201, 74 Stat. 506; 30 U.S.C. 701-704, 43 U.S.C. 2, 1201, 1371. (70 Stat. 1127)

SOURCE: 35 FR 9596, June 13, 1970, unless otherwise noted.

§ 2550.0-2 Objectives.

(a) The program of the Secretary of the Interior in the administration of the Act is to grant to qualified applicants maximum tenure consistent with the public interest in the lands which they occupy. Where the public interest does not permit sale of a fee simple interest, the period of tenure granted will ordinarily not terminate until the land is needed for a public program, provided that, where paragraph (b) of § 2550.0-3 is applicable, tenure shall also be consistent with the terms and conditions specified by the agency or department in aid of whose function the lands are used. The right to purchase an alternate tract will ordinarily be granted a qualified applicant where the consent mentioned in paragraph (b) of § 2550.0-3 is required but not given and the other requirements of that paragraph are satisfied.

(b) In determining the price for the interest to be conveyed under the Act, the Secretary of the Interior will weigh and evaluate the equities claimed by the applicant and will also give consideration to other equities which his investigation may reveal.

§ 2550.0-3 Authority.

(a) The Act of October 23, 1962, as amended (76 Stat. 1127; 30 U.S.C. 701-709), hereinafter referred to as "the Act", authorizes the Secretary of the Interior, in his discretion, to convey to any qualified applicant who is an occupant of an unpatented mining claim which is determined by the Secretary to be invalid, an interest, up to and including a fee simple, in and to an area within the claim of not more than (1) five acres, or (2) the acreage actually occupied by him, whichever is less. The Act permits the Secretary to make a like conveyance to any occupant of an unpatented mining claim, who, after notice from a qualified officer of the United States that the claim is believed to be invalid, relinquishes to the United States all right in and to such claim which he may have under the mining laws. Such conveyances may be made only to a qualified applicant who applies therefor within the period ending June 30, 1971, and upon payment of an amount established in accordance with the Act.

(b) The Act further provides that when the qualified applicant applies for lands which have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State, county, municipality, water district, or other local governmental subdivision or agency, the Secretary of the Interior may convey an interest therein only with the consent of the head of the governmental unit concerned and under such terms and conditions as said head may deem necessary. Where such consent is not given, the Act permits the Secretary, after arrangements satisfactory to the Secretary have been made for termination of the applicant's occupancy of his unpatented mining claim and for settlement of any liability for the unauthorized use thereof which may have been incurred, to grant the applicant a right to purchase, for residential use, an interest in another tract made available by him for sale under the Act (1) from unappropriated and unreserved lands of the United States or (2) from lands subject to classification under section 7 of the Taylor Grazing Act (48 Stat. 1272, 43 U.S.C. 315f), as amended, said right to expire within 5 years from the date on which it is granted, unless sooner exercised.

(c) The Act requires the Secretary, prior to any conveyance under the Act, to determine the fair market value, as of the date of appraisal, of the interest to be conveyed exclusive of the value of any improvements placed on the lands by the applicant or his predecessors in interest. It also requires him, in establishing the purchase price to be paid by the applicant, to take into consideration any equities of the applicant and his predecessors in interest, including conditions of prior use and occupancy, the price never to exceed its fair market value nor to be less than $5 per acre and to be payable, in the discretion of the Secretary, in a lump sum or in installments.

(d) The Act provides that all conveyances thereunder shall reserve to the United States all mineral interests of the United States in the lands conveyed for the term of the estate. It withdraws from all forms of entry and appropriation, for the term of the estate conveyed, reserve minerals locatable under the mining laws or disposable under the Act of July 31, 1947 (61 Stat. 681, 30 U.S.C. 601-604, as amended). It permits the Secretary to lease, under the mineral leasing laws, reserved oil, gas, and other leasable minerals for exploration and development purposes, but without the right of surface ingress or egress.

(e) The Act provides that the execution of any conveyance thereunder does not relieve an applicant of any liability, existing on the date of the conveyance, to the United States, for unauthorized use of the land in and to which an interest is granted. However, it provides that with respect to persons who file applications for conveyance pursuant to the Act within the period ending June 30, 1971, trespass charges shall not be sought or collected from any qualified applicant who has filed an application for land in the mining claim pursuant to the Act, based upon occupancy of such claim, whether residential or otherwise, for any period preceding the final administrative determination of the invalidity of the mining claim by the Secretary or the voluntary relinquishment of the mining claim, whichever occurs earlier, provided that the mining claim embracing the land applied for was not located at a time when the land included therein was withdrawn or otherwise not subject to location.

(f) The Act provides that any conveyance of less than a fee made under the Act shall include provision for removal from the tract of any improvements or other property of the applicant at the close of the period for which the conveyance is made, or if it be an interest terminating on the death of the applicant, within one year thereafter.

§ 2550.0-5 Definitions.

As used in the Act and the regulations of this part:

(a) The term "qualified applicant" means (1) a residential occupant-owner, as of October 23, 1962, of valuable improvements in an unpatented mining claim which constitute for him a principal place of residence and which he and his predecessors in interest were in possession of for not less than seven years prior to July 23, 1962 or (2) the heirs or devisees of such a residential occupant-owner.

(b) The term "occupant-owner" refers to persons who, on October 23, 1962, claimed title to valuable improvements which they or their predecessors in interest have constructed on an unpatented mining claim even though title to the improvements might ultimately be found to be in the Government.

(c) The term "interest" includes any estate in lands, including, but not limited to, fee simple, life estate, estate for a term of years, lease, or permit.

(d) The term "a principal place of residence" means an improved site used by a qualified applicant as one of his principal places of residence except during periods when weather and topography may make it impracticable for use. The term does not mean a site given casual or intermittent residential use, such as for a hunting cabin or for weekend occupancy.

(e) The term "qualified officer of the United States" means the Secretary of the Interior or his designate within the Department of the Interior or, with respect to lands within the administrative jurisdiction of any other department or agency, the designate of the head of that department or agency under authority delegated to him by the Secretary of the Interior.

(f) The word "equities" is intended to include for consideration such things as the pecuniary situation of the applicant, his ability to pay, whether he previously paid market value for the property, the date when the mining claim was first staked, whether there are substantial reasons to believe that a concerted effort was made to develop and extract the minerals sought as compared to a casual attempt, whether such minerals were actually extracted and the deposit depleted, and whether the applicant was relying on custom in his occupancy. The word "equities" does not include any payments of real property taxes, public benefit assessments, or any other public service charges.

§ 2550.0-7 Cross reference.

For conveyance of less than a fee see also Part 2914 of this chapter.

Subpart 2551—Mining Claim Occupancy

SOURCE: 35 FR 9597, June 13, 1970, unless otherwise noted.

§ 2551.1 Petitions.

Any person who holds a mining claim which has not been invalidated and who wishes to determine whether he should make application under the Act, may petition, in writing, any qualified officer of the United States to state whether or not he believes the claim to be invalid. The petition must be accompanied by a nonrefundable petition service fee of $5. Such a petition will not be considered an admission of the invalidity of a claim. The petition should include the name and post office address of the claimant, the name, location and legal description of the mining claim or references sufficient to identify the land on the ground, the date of the location, date and place of recordation and claim of title, a description, including dates, of improvements placed on the lands, and a request for a statement of belief as to the invalidity of the claim.

§ 2551.2 Applications.

(a) A filing fee of $10 which is not returnable is required, and should accompany the application.

(b) Applicants must file applications on or before June 30, 1971, in the proper office (see § 1821.2-1 of this chapter).

(c) No particular form of application is required but the application must be typewritten or in legible handwriting and should contain the following information:

(1) Name and post office address of the applicant.

(2) Location of the mining claim by legal or other description sufficient to permit ready, accurate identification of the lands on the ground.

(3) Date of location of mining claim, name of claim, date and place of recordation, and chain of title.

(4) A description of the improvements placed upon the lands involved, and a statement showing that a residence had been on the claim since prior to July 23, 1955.

(5) A statement as to ownership and possession of the improvements during the period beginning with July 23, 1955, through October 23, 1962, including the name or names of any predecessors in interest during said period.

(6) Reference to the Act of October 23, 1962 (76 Stat. 1127).

(7) The date the mining claim was determined to be invalid or the date the claim was relinquished to the United States.

(8) A statement of the interest in lands which the applicant desires, such as "fee title," "lease," or "life estate."

(9) A statement of any equities which the applicant feels should be considered in establishing the purchase price.

(10) A description of the lands, not to exceed 5 acres, claimed to be actually occupied.

§ 2551.3 Offers to convey an interest in the lands applied for.

Where the authorized officer determines that an interest in the lands applied for can be conveyed, he will submit to the applicant an offer to convey, specifying the term of the estate offered, the conditions precedent which must be met before conveyance may be made, the limitations and reservations to be contained in the conveyance, the price to be paid, the cost of survey, if any, the conditions subsequent to be performed by the applicant, and the time within which the offer must be accepted. (See § 2550.0-3.)

§ 2551.4 Offers of alternate tracts.

(a) Where the authorized officer determines that an interest in the lands sought cannot be conveyed, he will so notify the applicant, giving his reasons therefor.

(b) Where the authorized officer determines that the conveyance of an interest in lands is otherwise justified but that the interests cannot be conveyed because the consent mentioned in § 2552.1-1 is not given, and he determines further that it would be proper to grant the applicant the right to select an alternate tract under the Act, he will advise that if satisfactory arrangements are made for termination of the occupancy of the unpatented mining claims and for settlement of any liability for unauthorized use thereof which may have been incurred, he will grant the applicant the right to select and purchase within 5 years an alternate tract from lands available or to be made available under the Act. The first applicant to select an available tract will have a preference right to purchase it at the price and under the terms set by the authorized officer, including a limitation on the time within which the applicant may purchase the tract selected.

PART 2560—ALASKA OCCUPANCY AND USE

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Subpart 2561—Native Allotments

SOURCE: 35 FR 9597, June 13, 1970, unless otherwise noted.

§ 2561.0-2 Objectives.

It is the program of the Secretary of the Interior to enable individual natives of Alaska to acquire title to the lands they use and occupy and to protect the lands from the encroachment of others.

§ 2561.0-3 Authority.

The Act of May 17, 1906 (34 Stat. 197), as amended August 2, 1956 (70 Stat. 954; 43 U.S.C. 270-1 to 270-3), authorizes the Secretary of the Interior to allot not to exceed 160 acres of vacant, unappropriated, and unreserved nonmineral land in Alaska or, subject to the provisions of the act of March 8, 1922 (42 Stat. 415; 48 U.S.C. 376-377), of vacant, unappropriated, and unreserved public land in Alaska that may be valuable for coal, oil, or gas deposits, or, under certain conditions, of national forest lands in Alaska, to any Indian, Aleut or Eskimo of full or mixed blood who resides in and is a native of Alaska, and who is the head of a family, or is twenty-one years of age.

§ 2561.0-5 Definitions.

As used in the regulations in this section.

(a) The term "substantially continuous use and occupancy" contemplates the customary seasonality of use and occupancy by the applicant of any land used by him for his livelihood and well-being and that of his family. Such use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not merely intermittent use.

(b) "Allotment" is an allocation to a Native of land of which he has made substantially continuous use and occupancy for a period of five years and which shall be deemed the "homestead" of the allottee and his heirs in perpetuity, and shall be inalienable and nontaxable except as otherwise provided by the Congress.

(c) "Allotment Act" means the Act of May 17, 1906 (34 Stat. 197), as amended (48 U.S.C. 357, 357a, 357b).

§ 2561.0-8 Lands subject to allotment.

(a) A Native may be granted a single allotment of not to exceed 160 acres of land. All the lands in an allotment need not be contiguous but each separate tract of the allotment should be in reasonably compact form.

(b) In areas where the rectangular survey pattern is appropriate, an allotment may be in terms of 40-acre legal subdivisions and survey lots on the basis that substantially continuous use and occupancy of a significant portion of such smallest legal subdivision shall normally entitle the applicant to the full subdivision, absent conflicting claims.

(c) Allotments may be made in national forests if founded on occupancy of the land prior to the establishment of the particular forest or if an authorized officer of the Department of Agriculture certifies that the land in the application for allotment is chiefly valuable for agricultural or grazing purposes.

(d) Lands in applications for allotment and allotments that may be valuable for coal, oil, or gas deposits are subject to the regulations of § 2093.4 of this chapter.

§ 2561.1 Applications.

(a) Applications for allotment properly and completely executed on a form approved by the Director, Bureau of Land Management, must be filed in the proper office which has jurisdiction over the lands.

(b) Any application for allotment of lands which extend more than 160 rods along the shore of any navigable waters shall be considered a request for waiver of the 160-rod limitation (see Part 2094 of this chapter).

(c) If surveyed, the land must be described in the application according to legal subdivisions and must conform to the plat of survey when possible. If unsurveyed, it must be described as accurately as possible by metes and bounds and tied to natural objects. On unsurveyed lands, the application should be accompanied by a map or approved protracted survey diagram showing approximately the lands included in the application.

(d) An application for allotment shall be rejected unless the authorized officer of the Bureau of Indian Affairs certifies that the applicant is a native qualified to make application under the Allotment Act, that the applicant has occupied and posted the lands as stated in the application, and that the claim of the applicant does not infringe on other native claims or area of native community use.

(e) The filing of an acceptable application for a Native allotment will segregate the lands. Thereafter, subsequent conflicting applications for such lands shall be rejected, except when the conflicting application is made for the conveyance of lands pursuant to any provision of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(f) By the filing of an application for allotment the applicant acquires no rights except as provided in paragraph (e) of this section. If the applicant does not submit the required proof within six years of the filing of his application in the proper office, his application for allotment will terminate without affecting the rights he gained by virtue of his occupancy of the land or his right to make another application.

[35 FR 9597, June 13, 1970, as amended at 39 FR 34542, Sept. 26, 1974]

§ 2561.2 Proof of use and occupancy.

(a) An allotment will not be made until the lands are surveyed by the Bureau of Land Management, and until the applicant or the authorized officer of the Bureau of Indian Affairs has made satisfactory proof of substantially continuous use and occupancy of the land for a period of five years by the applicant. Such proof shall be made on a form approved by the Director, Bureau of Land Management, and filed in the proper land office. If made by the applicant, it must be signed by him, but if he is unable to write his name, his mark or thumb print shall be impressed on the statement and witnessed by two persons. This proof may be submitted with the application for allotment if the applicant has then used and occupied the land for five years, or may be made at any time within six years after the filing of the application when the requirements have been met.

§ 2561.3 Effect of allotment.

(a) Land allotted under the Act is the property of the allottee and his heirs in perpetuity, and is inalienable and nontaxable. However, a native of Alaska who received an allotment under the Act, or his heirs, may with the approval of the Secretary of the Interior or his authorized representative, convey the complete title to the allotted land by deed. The allotment shall thereafter be free of any restrictions against alienation and taxation unless the purchaser is a native of Alaska who the Secretary determines is unable to manage the land without the protection of the United States and the conveyance provides for a continuance of such restrictions.

(b) Application by an allottee or his heirs for approval to convey title to land allotted under the Allotment Act shall be filed with the appropriate officer of the Bureau of Indian Affairs.

Subpart 2562—Trade and Manufacturing Sites

AUTHORITY: R.S. 2478; 43 U.S.C. 1201.

SOURCE: 35 FR 9598, June 13, 1970, unless otherwise noted.

§ 2562.0-3 Authority.

Section 10 of the act of May 14, 1898 (30 Stat. 413, as amended August 23, 1958 (72 Stat. 730; 43 U.S.C. 687a), authorizes the sale at the rate of $2.50 per acre of not exceeding 80 acres of land in Alaska possessed and occupied in good faith as a trade and manufacturing site. The lands must be nonmineral in character, except that lands that may be valuable for coal, oil, or gas deposits are subject to disposition under the act of March 8, 1922 (42 Stat. 415; 48 U.S.C. 376-377), as amended, and the regulations of § 2093.4 of this chapter.

§ 2562.1 Initiation of claim.

(a) *Notice.* Any qualified person, association, or corporation initiating a claim on or after April 29, 1950, under section 10 of the act of May 14, 1898, by the occupation of vacant and unreserved public land in Alaska for the purposes of trade, manufacture, or other productive industry, must file notice of the claim for recordation in the proper office for the district in which the land is situated, within 90 days after such initiation. Where on April 29, 1950, such a claim was held by a qualified person, association, or corporation, the claimant must file notice of the claim in the proper office, within 90 days from that date.

(b) *Form of notice.* The notice must be filed on a form approved by the Director in triplicate if the land is unsurveyed, or in duplicate if surveyed, and shall contain:

(1) The name and address of the claimant, (2) age and citizenship, (3) date of occupancy, and (4) the description of the land by legal subdivisions, section, township and range, if surveyed, or, if unsurveyed, by metes and bounds with reference to some natural object or permanent monument, giving, if desired, the approximate latitude and longitude. The notice must designate the kind of trade, manufac-

ture, or other productive industry in connection with which the site is maintained or desired.

(c) *Failure to file notice.* Unless a notice of the claim is filed within the time prescribed in paragraph (a) of this section no credit shall be given for occupancy of the site prior to filing of notice in the proper office, or application to purchase, whichever is earlier.

(d) *Recording fee.* The notice of the claim must be accompanied by a remittance of $10.00, which will be earned and applied as a service charge for recording the notice, and will not be returnable, except in cases where the notice is not acceptable to the proper office for recording, because the land is not subject to the form of disposition specified in the notice.

§ 2562.2 Qualifications of applicant.

An application must show that the applicant is a citizen of the United States and 21 years of age, and that he has not theretofore applied for land as a trade and manufacturing site. If such site has been applied for and the application not completed, the facts must be shown. If the application is made for an association of citizens or a corporation, the qualifications of each member of the organization must be shown. In the case of a corporation, proof of incorporation must be established by the certificate of the officer having custody of the records of incorporation at the place of its formation and it must be shown that the corporation is authorized to hold land in Alaska.

§ 2562.3 Applications.

(a) *Execution.* Application for a trade and manufacturing site should be executed in duplicate and should be filed in the proper office. It need not be sworn to, but it must be signed by the applicant and must be corroborated by the statements of two persons.

(b) *Fees.* All applications must be accompanied by an application service fee of $10 which will not be returnable.

(c) *Time for filing.* Application to purchase a claim, along with the required proof or showing, must be filed within 5 years after the filing of notice of the claim.

(d) *Contents.* The application to enter must show:

(1) That the land is actually used and occupied for the purpose of trade, manufacture or other productive industry when it was first so occupied, the character and value of the improvements thereon and the nature of the trade, business or productive industry conducted thereon and that it embraces the applicant's improvements and is needed in the prosecution of the enterprise. A site for a prospective business cannot be acquired under section 10 of the act of May 14, 1898 (30 Stat. 413; 43 U.S.C. 687a).

(2) That no portion of the land is occupied or reserved for any purpose by the United States or occupied or claimed by natives of Alaska; that the land is unoccupied, unimproved, and unappropriated by any person claiming the same other than the applicant.

(3) That the land does not abut more than 80 rods of navigable water.

(4) That the land is not included within an area which is reserved because of springs thereon. All facts relative to medicinal or other springs must be stated, in accordance with § 2311.2(a) of this chapter.

(5) That no part of the land is valuable for mineral deposits other than coal, oil, or gas, and that at the date of location no part of the land was claimed under the mining laws.

(e) *Description of land.* If the land be surveyed, it must be described in the application according to legal subdivisions of the public-land surveys. If it be unsurveyed, the application must describe it by approximate latitude and longitude and otherwise with as much certainty as possible without survey.

§ 2562.4 Survey.

(a) If the land applied for be unsurveyed and no objection to its survey is known to the authorizing officer, he will furnish the applicant with a certificate stating the facts, and, after receiving such certificate, the applicant may make application to the State Director for the survey of the land. Upon receipt of an application, the State Director will, if conditions make such procedure practicable and no objection is shown by his records, furnish the applicant with an estimate of the cost of field and office work, and upon receipt of the deposit required will issue appropriate instructions for the survey of the claim, such survey to be made not later than the next surveying season. The sum so deposited by the applicant for survey will be deemed an appropriation thereof and will be held to be expended in the payment of the cost of the survey, including field and office work, and upon the acceptance of the survey any excess over the cost shall be repaid to the depositor or his legal representative.

(b) In case it is decided that by reason of the inaccessibility of the locality embraced in an application for the survey, or by reason of other conditions, it will result to the advantage of the Government or claimant to have the survey executed by a deputy surveyor, the State Director will deliver an order to the applicant for such survey, which will be sufficient authority for any deputy surveyor to make a survey of the claim.

(c) In the latter contingency the survey must be made at the expense of the applicant, and no right will be recognized as initiated by such application unless actual work on the survey is begun and carried to completion without unnecessary delay.

§ 2562.5 Publication and posting.

The instructions given in subpart 1824 of this chapter, relative to publication and posting.

§ 2562.6 Form of entry.

Claims initiated by occupancy after survey must conform thereto in occupation and application, but if the public surveys are extended over the lands after occupancy and prior to application, the claim may be presented in conformity with such surveys, or, at the election of the applicant, a special survey may be had.

§ 2562.7 Patent.

The application and proofs filed therewith will be carefully examined and, if all be found regular, the application will be allowed and patent issued upon payment for the land at the rate of $2.50 per acre, and in the absence of objections shown by his records.

Subpart 2563—Homesites or Headquarters

Source: 35 FR 9599, June 13, 1970, unless otherwise noted.

§ 2563.0-2 Purpose.

(a) *Act of March 3, 1927.* The purpose of this statute is to enable fishermen, trappers, traders, manufacturers, or others engaged in productive industry in Alaska to purchase small tracts of unreserved land in the State, not exceeding 5 acres, as homesteads or headquarters.

§ 2563.0-3 Authority.

(a) The act of March 3, 1927 (44 Stat. 1364; 43 U.S.C. 687a), as amended, authorizes the sale as a homestead or headquarters of not to exceed five acres of unreserved public lands in Alaska at the rate of $2.50 per acre, to any citizen of the United States 21 years of age employed by citizens of the United States, association of such citizens, or by corporations organized under the laws of the United States, or of any State or Territory, whose employer is engaged in trade, manufacture, or other productive industry in Alaska, and to any such person who is himself engaged in trade, manufacture or other productive industry in Alaska. The lands must be nonmineral in character except that lands that may be valuable for coal, oil, or gas deposits are subject to disposition under the provisions of the act of March 8, 1922 (42 Stat. 415, 43 U.S.C. 270-11, 270-12), as amended.

(b) The act of May 26, 1934 (48 Stat. 809; 43 U.S.C. 687a) amended section 10 of the act of May 14, 1898 (30 Stat. 413), as amended by the act of March 3, 1927 (44 Stat. 1364), so as to provide that any citizen, after occupying land of the character described in said section of a homestead or headquarters, in a habitable house not less than 5 months each year for 3 years, may purchase such tract, not exceeding 5 acres, in a reasonably compact form, without a showing as to his employment or business, upon the payment of $2.50 per acre, the minimum payment for any one tract to be $10.

§ 2563.0-7 Cross references.

See the following parts in this subchapter: for Indian and Eskimo allotments, Part 2530; for mining claims, Subpart 3826; for school indemnity selections, Subpart 2627; for shore space, Subpart 2094 for trade and manufacturing sites, Subpart 2562.

§ 2563.1 Purchase of tracts not exceeding 5 acres, on showing as to employment or business (Act of March 3, 1927).

(a) *Notice of initiation of claim.* A notice of the initiation of a claim under the act of March 3, 1927, must designate the kind of trade, manufacture, or other productive industry in connection with which the claim is maintained or desired, and identify its ownership. The procedure as to notices will be governed in other respects by the provisions of § 2563.2-1(a) to (d).

§ 2563.1-1 Application.

(a) *Form and contents of applications.* Applications under the act of March 3, 1927, must be filed in duplicate in the proper office for the district in which the land is situated, and the claim must be in reasonably compact form.

An application need not be under oath but must be signed by the applicant and corroborated by the statements of two persons and must show the following facts:

(1) The age and citizenship of applicant.

(2) The actual use and occupancy of the land for which application is made for a homestead or headquarters.

(3) The date when the land was first occupied as a homestead or headquarters.

(4) The nature of the trade, business, or productive industry in which applicant or his employer, whether a citizen, an association of citizens, or a corporation is engaged.

(5) The location of the tract applied for with respect to the place of business and other facts demonstrating its adaptability to the purpose of a homestead or headquarters.

(6) That no portion of the tract applied for is occupied or reserved for any purpose by the United States, or occupied or claimed by any natives of Alaska, or occupied as a town site or missionary station or reserved from sale, and that the tract does not include improvements made by or in possession of another person, association, or corporation.

(7) That the land is not included within an area which is reserved because of springs thereon. All facts as to medicinal or other springs must be stated, in accordance with § 2311.2(a).

(8) That no part of the land is valuable for mineral deposits other than coal, oil or gas, and that at the date of location no part of the land was claimed under the mining laws.

(9) If the land desired for purchase is surveyed, the application must include a description of the tract by aliquot parts of legal subdivisions, not exceeding 5 acres. If the tract is situated in the fractional portion of a sectional lotting, the lot may be subdivided; where such subdivision, however, would result in narrow strips or other areas containing less than 2½ acres, not suitable for disposal as separate units, such adjoining excess areas, in the discretion of the authorized officer and with the consent of the applicant, may be included with the tract applied for, without subdividing and the application will be amended accordingly. Where a supplemental plat is required, to provide a proper description, it will be prepared at the time of approval of the application.

(10) If the land is unsurveyed, the application must be accompanied by a petition for survey, describing the tract applied for with as much certainty as possible, without actual survey, not exceeding 5 acres, and giving the approximate latitude and longitude of one corner of the claim.

(b) *Filing fee.* All applications must be accompanied by an application service fee of $10 which will not be returnable.

(c) *Time for filing application.* Application to purchase a claim, along with the required proof or showing, must be filed within 5 years after the filing of notice of the claim.

§ 2563.1-2 Approval.

Care will be taken in all cases before patent issues to see that the lands applied for are used for the purposes contemplated by the said act of March 3, 1927, and that they are not used for any purpose inconsistent therewith.

§ 2563.2 Purchase of tracts not exceeding 5 acres, without showing as to employment or business (Act of May 26, 1934).

§ 2563.2-1 Procedures for initiating claim.

(a) *Who must file.* Any qualified person initiating a claim under the act of May 26, 1934, must file notice of the claim for recordation in the proper office for the district in which the land is situated, within 90 days after such initiation.

(b) *Form of notice.* The notice must be filed on a form approved by the Director in triplicate if the land is unsurveyed, or in duplicate if surveyed, and shall contain: (1) The name and address of the claimant, (2) age and citizenship, (3) date of settlement and occupancy, and (4) the description of the land by legal subdivisions, section, township and range, if surveyed, or, if unsurveyed, by metes and bounds with reference to some natural object or permanent monument, giving, if desired, the approximate latitude and longitude.

(c) *Failure to file notice.* Unless a notice of the claim is filed within the time prescribed in paragraph (a) of this section no credit shall be given for occupancy of the site prior to filing of notice in the proper office, or application to purchase, whichever is earlier.

(d) *Recording fee.* The notice of the claim must be accompanied by a remittance of $10.00, which will be applied as a service charge for recording the notice, and will not be returnable, except in cases where the notice is not acceptable to the proper office for recording because the land is not subject to the form of disposition specified in the notice.

(e) *Form and contents of application.* Applications under the act of May 26, 1934, must be filed in duplicate, if for surveyed land, and in triplicate, if for unsurveyed land, in the proper office for the district within which the land is situated.

An application need not be under oath but must be signed by the applicant and corroborated by the statements of two persons and must show the following facts:

(1) Full name, post office address and age of applicant.

(2) Whether the applicant is a native-born or naturalized citizen of the United States, and if naturalized, evidence of such naturalization must be furnished.

(3) A description of the habitable house on the land, the date when it was placed on the land, and the dates each year from which and to which the applicant has resided in such house.

(4) That no portion of the tract applied for is occupied or reserved for any purpose by the United States, or occupied or claimed by any native of Alaska, or occupied as a townsite, or missionary station, or reserved from sale, and that the tract does not include improvements made by or in the possession of any other person, association, or corporation.

(5) That the land is not included within an area which is reserved because of hot, medicinal or other springs, as explained in § 2311.2(a) of this chapter. If there be any such springs upon or adjacent to the land, on account of which the land is reserved, the facts relative thereto must be set forth in full.

(6) That no part of the land is valuable for mineral deposits other than coal, oil or gas, and that at the date of location no part of the land was claimed under the mining laws.

(7) That the applicant has not theretofore applied for land under said act, or if he has previously purchased a tract he should make a full showing as to the former purchase and the necessity for the second application.

(8) An application for surveyed land must describe the land by aliquot parts of legal subdivisions, not exceeding 5 acres. If the tract is situated in the fractional portion of a sectional lotting, the lot may be subdivided; where such subdivision, however,

would result in narrow strips or other areas containing less than 2½ acres, not suitable for disposal as separate units, such adjoining excess areas, in the discretion of the authorized officer and with the consent of the applicant, may be included with the tract applied for, without subdividing, and the application will be amended accordingly. Where a supplemental plat is required to provide a proper description, it will be prepared at the time of approval of the application.

(9) All applications for unsurveyed land must be accompanied by a petition for survey, describing the land applied for with as much certainty as possible, without actual survey, not exceeding 5 acres, and giving the approximate latitude and longitude of one corner of the claim.

(f) *Filing fee.* All applications must be accompanied by an application service fee of $10 which will not be returnable.

(Sec. 10, 30 Stat. 413, as amended; 48 U.S.C. 461)

Subpart 2564—Native Townsites

SOURCE: 35 FR 9601, June 13, 1970, unless otherwise noted.

§ 2564.0-3 Authority.

The act of May 25, 1926, (44 Stat. 629; 43 U.S.C. 733-736) provides for the townsite survey and disposition of public lands set apart or reserved for the benefit of Indian or Eskimo occupants in trustee townsites in Alaska and for the survey and disposal of the lands occupied as native towns or villages. The act of February 26, 1948 (62 Stat. 35; 43 U.S.C. 737), provides for the issuance of an unrestricted deed to any competent native for a tract of land claimed and occupied by him within any such trustee townsite.

§ 2564.0-4 Responsibility.

(a) *Administration of Indian possessions in trustee towns.* As to Indian possessions in trustee townsites in Alaska established under authority of section 11 of the act of March 3, 1891 (26 Stat. 1009; 43 U.S.C. 732), and for which the townsite trustee has closed his accounts and been discharged as trustee, and as to such possessions in other trustee townsites in Alaska, such person as may be designated by the Secretary of the Interior will perform all necessary acts and administer the necessary trusts in connection with the act of May 25, 1926.

(b) *Administration of native towns.* The trustee for any and all native towns in Alaska which may be established and surveyed under authority of section 3 of the said act of May 25, 1926 (44 Stat. 630; 43 U.S.C. 735), will take such action as may be necessary to accomplish the objects sought to be accomplished by that section.

§ 2564.1 Application for restricted deed.

A native Indian or Eskimo of Alaska who occupies and claims a tract of land in a trustee townsite and who desires to obtain a restricted deed for such tract should file application therefor on a form approved by the Director, with the townsite trustee.

§ 2564.2 No payment, publication or proof required on entry for native towns.

In connection with the entry of lands as a native town or village under section 3 of the said act of May 25, 1926, no payment need be made as purchase money or as fees, and the publication and proof which are ordinarily required in connection with trustee townsites will not be required.

§ 2564.3 Native towns occupied partly by white occupants.

Native towns which are occupied partly by white lot occupants will be surveyed and disposed of under the provisions of both the act of March 3, 1891 (26 Stat. 1095, 1099), and the act of May 25, 1926 (44 Stat. 629).

§ 2564.4 Provisions to be inserted in restricted deeds.

The townsite trustee will note a proper reference to the act of May 25, 1926, on each deed which is issued under authority of that act and each such deed shall provide that the title conveyed is inalienable except upon approval of the Secretary of the Interior or his authorized representative, and that the issuance of the restricted deed does not subject the tract to taxation, to levy and sale in satisfaction of the debts, contracts or liabilities of the transferee, or to any claims of adverse occupancy or law of prescription; also, if the established streets and alleys of the townsite have been extended upon and across the tract, that there is reserved to the town site the area covered by such streets and alleys as extended. The deed shall further provide that the approval by the Secretary of the Interior or his authorized representative of a sale by the Indian or Eskimo transferee shall vest in the purchaser a complete and unrestricted title from the date of such approval.

§ 2564.5 Sale of land for which restricted deed was issued.

When a native possessing a restricted deed for land in a trustee townsite issued under authority of the act of May 25, 1926 (44 Stat. 629; 43 U.S.C. 733-736), desires to sell the land, he should execute a deed on a form approved by the Director, prepared for the approval of the Secretary of the Interior, or his authorized representative, and send it to the townsite trustee in Alaska. The townsite trustee will forward the deed to the Area Director of the Bureau of Indian Affairs who will determine whether it should be approved. Where the deed is approved it shall be returned by the Area Director, Bureau of Indian Affairs, through the townsite trustee to the vendor. In the event the Area Director determines that the deed shall not be approved, he shall so inform the native possessing the restricted deed, who shall have a right of appeal from such finding or decision to the Commissioner of Indian Affairs within sixty days from the date of notification of such finding or decision. The appeal shall be filed with the Area Director. Should the Commissioner uphold the decision of the Area Director, he shall notify the applicant of such action, informing him of his right of appeal to the Secretary of the Interior.

§ 2564.6 Application for unrestricted deed.

Any Alaska native who claims and occupies a tract of land in a trustee townsite and is the owner of land under a restricted deed issued under the act of May 25, 1926 (44 Stat. 629; 43 U.S.C. 732-737) may file an application for an unrestricted deed pursuant to the act of February 26, 1948 (62 Stat. 35; 43 U.S.C. 732-737), with the townsite trustee. The application must be in writing and must contain a description of the land claimed and information regarding the competency of the applicant. It must also contain evidence substantiating the claim and occupancy of the applicant, except when the applicant has been issued a restricted deed for the land. A duplicate copy of the application must be submitted by the applicant to the Area Director of the Bureau of Indian Affairs.

§ 2564.7 Determination of competency or noncompetency; issuance of unrestricted deed.

(a) Upon a determination by the Bureau of Indian Affairs that the applicant is competent to manage his own affairs, and in the absence of any conflict or other valid objection, the townsite trustee will issue an unrestricted deed to the applicant. Thereafter all restrictions as to sale, encumbrance, or taxation of the land applied for shall be removed, but the said land shall not be liable to the satisfaction of any debt, except obligations owed to the Federal Government, contracted prior to the issuance of such deed. Any adverse action under this section by the townsite trustee shall be subject to appeal to the Board of Land Appeals, Office of the Secretary, in accordance with Part 4 of 43 CFR Subtitle A.

(b) In the event the Area Director determines that the applicant is not competent to manage his own affairs, he shall so inform the applicant, and such applicant shall have a right of appeal from such finding or decision to the Commissioner of Indian Affairs, within 60 days from the date of notification of such finding or decision. The appeal shall be filed with the Area Director. Should the Commissioner uphold the decision of the Area Director, he shall notify the applicant of such action, informing him of his right of appeal to the Secretary of the Interior.

(c) Except as provided in this section, the townsite trustee shall not issue other than restricted deeds to Indian or other Alaska natives.

(43 U.S.C. 733-735, 737)

[35 FR 9601, June 13, 1970, as amended at 41 FR 29122, July 15, 1976]

Subpart 2565—Nonnative Townsites

SOURCE: 35 FR 9601, June 13, 1970, unless otherwise noted.

§ 2565.0-3 Authority.

The entry of public lands in Alaska for townsite purposes, by such trustee or trustees as may be named by the Secretary of the Interior for that purpose, is authorized by section 11 of the act of March 3, 1891.

(Sec. 11, 26 Stat. 1099; 43 U.S.C. 732)

§ 2565.0-7 Cross reference.

Townsites in Alaska may be reserved by the President and sold as provided for in sections 2380 and 2381 of the Revised Statutes; 43 U.S.C. 711, 712. The regulations governing these townsites are contained in §§ 2760.0-3 and 2761.3.

§ 2565.1 General requirements.

(a) *Survey of exterior lines; exclusions from townsite survey.* If the land is unsurveyed the occupants must by application to the State Director, obtain a survey of the exterior lines of the townsite which will be made at Government expense. There must be excluded from the tract to be surveyed and entered for the townsite any lands set aside by the district court under section 31 of the act of June 6, 1900 (31 Stat. 332; 48 U.S.C. 40), for use as jail and courthouse sites, also all lands needed for Government purposes or use, together with any existing valid claim initiated under Russian rule.

(b) *Petition for trustee and for survey of lands into lots, blocks, etc.* When the survey of the exterior lines has been approved, or if the townsite is on surveyed land, a petition, signed by a majority of occupants of the land, will be filed in the proper office requesting the appointment of trustee and the survey of the townsite into lots, blocks, and municipal reservations for public use, the expense thereof to be paid from assessments upon the lots, as provided in § 2565.3(b) of this part.

(c) *Designation of trustee; payment required: area enterable.* If the petition be found sufficient, the Secretary of the Interior will designate a trustee to make entry of the townsite, payment for which must be made at the rate of $1.25 per acre. If there are less than 100 inhabitants the area of the townsite is limited to 160 acres; if 100 and less than 200, to 320 acres; if more than 200, to 640 acres, this being the maximum area allowed by the statute.

§ 2565.2 Application; fees; contests and protests.

(a) *Filing of application; publication and posting; submission of proof.* The trustee will file his application and notice of intention to make proof, and thereupon the authorizing officer will issue the usual notice of making proof, to be posted and published at the trustee's expense, for the time and in the manner as in other cases provided, and proof must be made showing occupancy of the tract, number of inhabitants thereon, character of the land, extent, value, and character of improvements, and that the townsite does not contain any land occupied by the United States for school or other purposes or land occupied under any existing valid claim initiated under Russian rule.

(b) *Application service fee.* The trustee's application shall be accompanied by $10 application service fee which shall not be returnable.

(c) *Expense money to be advanced by lot occupants.* The occupants will advance a sufficient amount of money to pay for the land and the expenses incident to the entry to be refunded to them when realized from lot assessments.

(d) *Contests and protests.* Applications for entry will be subject to contest or protest as in other cases.

§ 2565.3 Subdivision.

(a) *Subdivision of land and payment therefore.* After the entry is made, the townsite will be subdivided by the United States into blocks, lots, streets, alleys, and municipal public reservations. The expense of such survey will be paid from the appropriation for surveys in Alaska reimbursable from the lot assessments collected.

(b) *Lot assessments.* The trustee will assess against each lot, according to area, its share of the cost of the subdivisional survey. The trustee will make a valuation of each occupied or improved lot in the townsite and assess upon such lots, according to their value, such rate and sum in addition to the cost of their share of the survey as will be necessary to pay all other expenses incident to the execution of his trust which have accrued up to the time of such levy. More than one assessment may be made if necessary to effect the purpose of the act of March 3, 1891, and this section.

(c) *Award and disposition of lots after subdivisional survey.* On the acceptance of the plat by the Bureau of Land Management, the trustee will publish a notice that he will, at the end of 30 days from the date thereof, proceed to award the lots applied for, and that all lots for which no applications are filed within 120 days from the date of said notice will be subject to disposition to the highest bidder at public sale. Only those who were occupants of lots or entitled to such occupancy at the date of the approval of final subdivisional townsite survey or their assigns thereafter, are entitled to the allotments herein provided. Minority and coverture are not disabilities.

§ 2565.4 Deeds.

(a) *Applications for deeds.* Claimants should file their applications for deeds, setting forth the grounds of their claims for each lot applied for, which should be corroborated by two witnesses.

(b) *Issuance of deeds; procedure on conflicting applications.* (1) Upon receipt of the patent and payment of the assessments the trustee will issue deeds for the lots. The deeds will be acknowledged before an officer duly authorized to take acknowledgements of deeds at the cost of the grantee. In case of conflicting applications for lots, the trustee, if he considers it necessary, may order a hearing to be conducted in accordance with the Part 1850 of this chapter.

(2) No deed will be issued for any lot involved in a contest until the case has been finally closed. Appeals from any decision of the trustee or from decisions of the Bureau of Land Management may be taken in the manner provided by Part 1840 of this chapter.

§ 2565.5 Sale of the land.

(a) *Public sale of unclaimed lots.* After deeds have been issued to the parties entitled thereto the trustee will publish or post notice that he will sell, at a designated place in the town and at a time named, to be not less than 30 days from date, at public outcry, for cash, to the highest bidder, all lots and tracts remaining unoccupied and unclaimed at the date of the approval of final subdivisional townsite survey, and all lots and tracts claimed and awarded on which the assessments have not been paid at the date of such sale. The notice shall contain a description of the lots and tracts to be sold, made in two separate lists, one containing the lots and tracts unclaimed at the date of the approval of final subdivisional townsite survey and the other the lots and tracts claimed and awarded on which the assessments have not been paid. Should any delinquent allottee, prior to the sale of the lot claimed by him, pay the assessments thereon, together with the pro rata cost of the publication and the cost of acknowledging deed, a deed will be issued to him for such lot, and the lot will not be offered at public sale. Where notice by publication is deemed advisable the notice will be published once a week for 5 consecutive weeks in accordance with § 1824.3 of this chapter prior to the date of sale, and in any event copies of such notice shall be posted in three conspicuous places within the townsite. Each lot must be sold at a fair price, to be determined by the trustee, and he is authorized to reject any and all bids. Lots remaining unsold at the close of the public sale in an unincorporated town may again be offered at a fair price if a sufficient demand appears therefor.

(b) *Sales to Federal, State and local governmental agencies.* (1) Any lot or tract in the townsite which is subject to sale to the highest bidder by the trustee pursuant to this section may in lieu of disposition at public sale be sold by the trustee at a fair value to be fixed by him to any Federal or State agency or instrumentality or to any local governmental agency or instrumentality of the State for use for public purposes.

(2) All conveyances under this section shall be subject to such conditions, limitations, or stipulations as the trustee shall determine are necessary or appropriate in the circumstances, including, where he deems proper, a provision for reversion of title to the trustee or his successor in interest. Any such provision for reversion of title, however, shall by its terms cease to be in effect 25 years after the conveyance.

(3) Conveyances under this section for lands within any incorporated city, town, village, or municipality may be made only after the proposed conveyance has received the approval of the city, town, or village council, or of the local official designated by such council. Such conveyances for lands within any unincorporated city, town, village or municipality may be made only after notice of the proposed conveyance, together with the opportunity to be heard, has been given by the proposed grantee to the residents or occupants thereof in accordance with the requirements for such notice in the case of the public sale of unclaimed lots in a trustee townsite. Any decision of the trustee which is adverse to a protest will be subject to the right of appeal under Part 1840 of this chapter. Upon filing of an appeal pursuant to that Part, action by the trustee on the conveyance will be suspended pending final decision on the appeal.

§ 2565.6 Rights-of-way.

(a) Notwithstanding any other provisions of this part, the trustee is authorized to grant rights-of-way for public purposes across any unentered lands within the townsite. This authority is expressly limited to grants of rights-of-way to cities, towns, villages, and municipalities, and to school, utility, and other types of improvement districts, and to persons, associations, companies, and corporations engaged in furnishing utility services to the general public, and to the United States, any Federal or State agency or instrumentality for use for public purposes.

(b) The trustee may in his discretion fix a reasonable charge for any grant under this authority to private persons, associations, companies and corporations, and to Federal and State agencies and instrumentalities, which charge shall be a lump sum. All grants shall be subject to such conditions, limitations, or stipulations as the trustee shall determine are necessary or appropriate in the circumstances. No grants of rights-of-way under this authority shall be made across or upon lands on which prior rights of occupancy or entry have vested under the law.

(c) Grants of rights-of-way under this section to Federal and State agencies and instrumentalities to private persons, associations, companies, or corporations affecting lands within any incorporated city, town, village, or municipality, may be made only after the proposed grant has received the approval of the city, town, or village council, or, where applicable, the municipal board or commission having authority under state law to approve rights-of-way for local public utility purposes. Grants of such rights-of-way to Federal and state agencies and instrumentalities and to private persons, associations, companies, or corporations within unincorporated cities, towns, villages, or municipalities may be made only after notice of the proposed grant, together with the opportunity to be heard, has been given by the proposed grantee to the residents or occupants thereof in accordance with the requirements for such notice in the case of the public sale of unclaimed lots in a trustee townsite. Any decision by the trustee which is adverse to a protest will be subject to the right of appeal under Part 1840 of this chapter. Upon the filing of an appeal, action by the trustee on the application for right-of-way will be suspended pending final decision on the appeal.

§ 2565.7 Final report of trustee; disposition of unexpended moneys and unsold lots.

After the disposal of a sufficient number of lots to pay all expenses incident to the execution of the trust, including the cost of the subdivisional survey, the trustee will make and transmit to the Bureau of Land Management his final report of his trusteeship, showing all amounts received and paid out and the balance remaining on hand derived from assessments upon the lots and from the public sale. The proceeds derived from such sources, after deducting all expenses, may be used by the trustee on direction of the Secretary of the Interior, where the town is unincorporated, in making public improvements, or, if the town is incorporated such remaining proceeds may be turned over to the municipality for the use and benefit thereof. After the public sale and upon proof of the incorporation of the town, all lots then remaining unsold will be deeded to the municipality, and all municipal public reserves will, by a separate deed, be conveyed to the municipality in trust for the public purposes for which they were reserved.

§ 2565.8 Records to be kept by trustee.

The trustee shall keep a tract book of the lots and blocks, a record of the deeds issued, a contest docket, and a book of receipts and disbursements.

§ 2565.9 Disposition of records on completion of trust.

The trustee's duties having been completed, the books of accounts of all his receipts and expenditures, together with a record of his proceedings as provided in § 2565.8 of this part with all papers, other books, and everything pertaining to such townsite in his possession and all evidence of his official acts shall be transmitted to the Bureau of Land Management to become a part of the records thereof, excepting from such papers, however, in case the town is incorporated, the subdivisional plat of the townsite, which he will deliver to the municipal authorities of the town, together with a copy of the townsite tract book or books, taking a receipt therefore to be transmitted to the Bureau of Land Management.

(Sec. 11, 26 Stat. 1099; 48 U.S.C. 355)

Subpart 2566—Alaska Railroad Townsites

SOURCE: 35 FR 9603, June 13, 1970, unless otherwise noted.

§ 2566.0-3 Authority.

It is hereby ordered that the administration of that portion of the act of March 12, 1914 (38 Stat. 305; 43 U.S.C. 975, 975a-975g) relating to the withdrawal, location and disposition of townsites shall be in accordance with the following regulations and provisions.

(a) *Orders revoked.* All Executive orders heretofore issued for the disposition of townsites along the Government railroads in Alaska are hereby revoked so far as they conflict with §§ 2566.1 and 2566.2. This order is intended to take the place of all other orders making provisions for the sale and disposal of lots in said townsites along Government railroads in Alaska under the provisions of said act.

(b) *Amendments*—(1) *Executive Orders 3529 and 5136.* Sections 2566.1 and 2566.2 are amended by E.O. 3529, Aug. 9, 1921 and E.O. 5136, June 12, 1929.

(2) The designation of the "Alaskan Engineering Commission" has been changed to "The Alaska Railroad." All matters which formerly were under the control of the chairman of said commission now are under the supervision of the general manager of the said railroad. The functions formerly exercised by the Commissioner of the General Land Office have been transferred to the Director, Bureau of Land Management.

(3) Due to the change in organization, plats of Alaska Railroad townsites are not approved by an official of the Alaska Railroad.

(4) The State Director in Alaska has been designated as Superintendent of Sales of Alaska Railroad townsites.

(c) *Executive Order 5136.* (1) It is ordered that Executive Order No. 3489, issued June 10, 1921, containing the Alaska Railroad Townsite Regulations, is hereby amended to authorize the Secretary of the Interior to reappraise and sell the unimproved lots in Nenana Townsite, Alaska, belonging to the United States, and to readjust the assessments levied against them for the improvement of streets, sidewalks, and alleys, and for the promotion of sanitation and fire protection by the Alaska Railroad prior to August 31, 1921.

(2) As to the lots within said townsite which have been forfeited for failure to pay such assessments, upon which valuable improvements have been placed, the provisions of said order regarding the collection of the unpaid assessments remain effective.

(3) This order shall continue in full force and effect unless and until revoked by the President or by act of Congress.

(Sec. 24, 26 Stat. 1103; as amended, sec. 1, 36 Stat. 347; sec. 1, 38 Stat. 305; sec. 11, 39 Stat. 865; 16 U.S.C. 471, 43 U.S.C. 141, 43 U.S.C. 975f, 43 U.S.C. 301)

§ 2566.0-7 Cross references.

(a) Sales of railroad townsites in Alaska, provided for by Executive Order No. 3489 of June 10, 1921, §§ 2566.1(a) to (f) and 2566.0-3(a), will be made by the authorized officer in Alaska, as superintendent of sales of railroad townsites in accordance with townsite regulations contained in §§ 2760.0-3 to 2761.2(e) so far as those regulations are applicable.

(b) For surveys, Alaska, see Part 9180 of this chapter. For townsites, Alaska, see § 2565.0-7.

§ 2566.1 General procedures.

(a) *Reservations.* The Alaska Railroad will file with the Secretary of the Interior, when deemed necessary, its recommendations for the reservation of such areas as in its opinion may be needed for townsite purposes. The Secretary of the Interior will thereupon transmit such recommendations to the President with his objections thereto or concurrence therewith. If approved by the President, the reservation will be made by Executive order.

(b) *Survey.* When in the opinion of the Secretary of the Interior the public interests require a survey of any such reservation, he shall cause to be set aside such portions thereof for railroad purposes as may be selected by the Alaska Railroad, and cause the remainder, or any part thereof, to be surveyed into urban or suburban blocks and lots of suitable size, and into reservations for parks, schools, and other public purposes and for Government use. Highways should be laid out, where practicable, along all shore lines, and sufficient land for docks and wharf purposes along such shore lines should be reserved in such places as there is any apparent necessity therefor. The survey will be made under the supervision of the Bureau of Land Management.

(c) *Preference right.* Any person residing in a reserved townsite at the time of the subdivisional survey thereof in the field and owning and having valuable and permanent improvements thereon, may, in the discretion of the Secretary of the Interior, be granted a preference right of entry, of not exceeding two lots on which he may have such improvements by paying the appraised price fixed by the superintendent of sale, under such regulations as the Secretary of the Interior may prescribe. Preference right proof and entry, when granted, must be made prior to the date of the public sale.

§ 2566.2 Public sale.

(a) *Generally.* The unreserved and unsold lots will be offered at public sale to the highest bidder at such time and place, and after such publication of notice, if any, as the Secretary of the Interior may direct.

(b) *Superintendent's authority.* Under the supervision of the Secretary of the Interior the superintendent of the sale will be, and he is hereby, authorized to make all appraisements of lots and at any time to reappraise any lot which in his judgment is not appraised at the proper amount, or to fix a minimum price for any lot below which it may not be sold, and he may adjourn, or postpone the sale of any lots to such time and place as he may deem proper.

(c) *Manner and terms of public sale.* (1) The Secretary of the Interior shall by regulations prescribe the manner of conducting the public sale, the terms thereof and forms therefor and he may prescribe what failures in payment will subject the bidder or purchaser to a forfeiture of his bid or right to the lot claimed and money paid thereon. The superintendent of sale will at the completion of the public sale deposit with the receiver of the proper local land office the money received and file with its officers the papers deposited with him by said bidder, together with his certificate as to successful bidder.

(2) If it be deemed advisable, the Director, Bureau of Land Management may direct the receiver of public moneys of the proper district to attend sales herein provided for in which event the cash payment required shall be paid to the said receiver.

Subpart 2567—Alaska Homestead Settlement

SOURCE: 35 FR 9604, June 13, 1970, unless otherwise noted.

§ 2567.0-3 Authority.

The homestead laws were extended to Alaska by the act of May 14, 1898 (30 Stat. 409; 43 U.S.C. 270), which was amended by the acts of March 3, 1903 (32 Stat. 1028; 43 U.S.C. 270), July 8, 1916 (39 Stat. 352; 43 U.S.C. 270-8 to 270-10, 270-14), June 28, 1918 (40 Stat. 632; 43 U.S.C. 270-8 to 270-10, 270-14), April 13, 1926 (44 Stat. 243; 43 U.S.C. 270-15—270-17), and July 11, 1956 (70 Stat. 528; 43 U.S.C. 270-7 and 270-10).

§ 2567.0-7 Cross references.

For Indian and Eskimo allotments, Subpart 2561, for school indemnity selections Subpart 2627; for shore space, Subpart 2094; for soldier's additional rights, Subpart 2616; for trade and manufacturing sites, Subpart 2562.

§ 2567.0-8 Lands subject to settlement and homestead entry.

All unappropriated public lands in Alaska adaptable to any agricultural use are subject to homestead settlement, and, when surveyed, to homestead entry, if they are not mineral or saline in character, are not occupied for the purpose of trade or business and have not been embraced within the limits of any withdrawal, reservation or incorporated town or city.

§ 2567.1 Application.

(a) *Form.* Application to make homestead entry for lands in Alaska should be presented on a form approved by the Director, the form prescribed for homestead entries under section 2289, Revised Statutes (43 U.S.C. 161, 171).

(b) *Showing to accompany application.* Each application on the prescribed form should be accompanied by a corroborated statement showing:

(1) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that the restriction as to length of claim has been waived or should be waived. (See § 2094.2 of this subchapter.)

(2) That the land is not within an area which is reserved because of springs thereon. All facts relative to medicinal or other springs must be stated, as set forth in § 2311.2(a) of this chapter.

(c) *Contents.* (1) A homestead application must describe the lands desired, if surveyed, according to legal subdivisions as shown by the plat of survey, and, excepting that it must thus conform and that the lands must be contiguous, there is no restriction as to the shape of the tract which may be entered. Where a settlement was made and a location notice posted and filed for record before the extension of the surveys, the application should make reference thereto; it should be stated also to what extent the land applied for is different from that covered by the notice; and the settler may not abandon all of the subdivisions covered by the location unless a showing is made which would justify amendment of his claim.

(2) A homestead application must describe the lands desired, if unsurveyed, by metes and bounds with relation to some natural or permanent monuments, and give the approximate latitude and longitude and otherwise with as much certainty as possible without actual survey. Reference should be made to the serial number

of the notice of settlement previously filed. If there has been any material deviation made in the description of the land claimed, a full explanation must be given of the reason for such deviation. A homestead application for unsurveyed lands must be accompanied by the settler's final or commutation homestead proof.

(d) *Service charges.* (1) When a homesteader applies to make entry he must pay an application nonrefundable service charge of $25. In addition, he must pay with his final proof, a nonrefundable service charge of $25. A successful contestant for the lands, pursuant to the Act of May 14, 1880 (21 Stat. 143; 43 U.S.C. 185), as amended, must pay, as a nonrefundable cancellation service charge, an additional $10. On all final proofs made before the authorizing officer, the claimant must pay to the authorizing officer the costs of reducing the testimony to writing, as determined by the authorizing officer. No proof shall be accepted or approved until all charges have been paid.

(2) Remittances other than cash or currency are to be made payable to the Bureau of Land Management. Checks or drafts are accepted subject to collection and final payment without cost to the government.

§ 2567.2 Homestead settlement entry.

(a) *Form of settlement on unsurveyed land.* A settlement claim on unsurveyed land must be rectangular in form, not more than 1 mile in length, located by lines running north and south, according to the true meridian, the four corners being marked by permanent monuments, unless a departure from such restrictions is authorized by the act of April 13, 1926 (44 Stat. 243; 43 U.S.C. 270-15 to 270-17). The said act permits a departure from the restrictions mentioned where by reason of local or topographic conditions it is not feasible or economical to include in rectangular form with cardinal boundaries the lands desired. Under the conditions recited in the law as justifying such departure, it will be sufficient that the claims shall be compact and approximately rectangular in form and where a departure from cardinal courses in the direction of boundary lines is necessary in order to include the lands desired there will be no restriction as to the amount of such departure. The modification of former practice in the matter of form and direction of boundaries is not to be construed, however, as authorizing the lines of the claims to be unduly extended in any such manner as will be productive of long narrow strips of land departing materially from the compactness of the tract as a whole.

(b) *Notice of settlement.* (1) A person making settlement on or after April 29, 1950 on unsurveyed land, in order to protect his rights, must file a notice of the settlement for recordation in the proper office for the district in which the land is situated, and post a copy thereof on the land, within 90 days after the settlement. Where settlement is made on surveyed lands, the settler, in order to protect his rights, must file a notice of the settlement for recordation, or application to make homestead entry, in the proper office for the district in which the land is located within 90 days after settlement.

(2) The notice must be filed on a form approved by the Director, in triplicate if the land is unsurveyed, or in duplicate if surveyed and shall contain: (i) The name and address of the settler, (ii) age and citizenship; (iii) date of settlement, and (iv) the description of the land by legal subdivisions, section, township and range, if surveyed, or, if unsurveyed, by metes and bounds with reference to some natural object or permanent monument, giving, if desired, the approximate latitude and longitude.

(3) Unless a notice of the claim is filed within the time prescribed in paragraphs (b)(1) and (2) of this section, no credit shall be given for residence and cultivation had prior to the filing of notice or application to make entry, whichever is earliest.

(c) *Recordation fee.* The notice of settlement claim must be accompanied by a remittance of $10.00 which will be applied as a service charge for recording the notice and will not be returnable, except in cases where the notice is not acceptable to the proper office for recording because the land is not subject to homestead settlement.

(d) *Marking corners of claim on unsurveyed lands; rights acquired by settlement on surveyed lands.* (1) A settler on unsurveyed land is required to mark the claim by permanent monuments at each corner, in order to establish the boundaries thereof.

(2) Settlement on any part of a surveyed quarter-section subject to homestead entry gives the right to enter all of the quarter section; but if a settler desires to initiate a claim to surveyed tracts which form part of more than one technical quarter-section, he should define the claim by placing some improvements on each of the smallest subdivisions claimed.

(e) *Law under which homestead must be perfected.* All homestead claims in Alaska must be perfected under and in accordance with the provisions of the 3-year homestead law of June 6, 1912 (37 Stat. 123; 43 U.S.C. 164, 169, 218), and regulations thereunder.

(Sec. 1, 30 Stat. 409, as amended; 48 U.S.C. 371)

§ 2567.3 Acreage.

(a) *Area subject to appropriation.* A homestead settlement or entry in Alaska is restricted to 160 acres, except in the case of a settlement made before July 8, 1916, or an entry based thereon, which may include as much as 320 acres, provided notice of the settlement was filed for record in the recording district in which the land is situated within 90 days after the settlement was made and the settlement was duly maintained until the filing of the application for entry and provided the applicant has not exhausted his homestead right in whole or in part in the United States.

(b) *Limitations.* The act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 212), provides that no person who shall, after the passage of the act, enter upon any of the public lands with a view to occupation, entry, or settlement under any of the public land laws shall be permitted to acquire title to more than 320 acres in the aggregate, under all of said laws. A former homestead entry outside of Alaska is not counted as a part of this acreage in connection with a homestead entry of 160 acres in Alaska. The fact that one may have acquired title to 160 acres under the homestead laws, or other agricultural public land laws, outside of Alaska, since August 30, 1890, does not disqualify him from entering 320 acres under the homestead laws in Alaska, based on settlement made prior to July 8, 1916.

(43 U.S.C. 270)

§ 2567.4 Qualifications of entryman.

(a) *Qualifications required.* Any person who is qualified to make an ordinary homestead entry in the United States under section 2289, Revised Statutes (43 U.S.C. 161, 171), is qualified to make homestead entry in Alaska, and a former homestead entry outside of Alaska does not bar the claimant's right to make entry in that State for not exceeding 160 acres.

(b) *Second entries.* No showing is required of an applicant for 160 acres in Alaska as to a former homestead entry outside of the State, but if the applicant has made homestead entry, or made an allowable homestead application or filed a location notice of settlement in the State and failed to perfect title to the land, he must, in connection with another application to make homestead entry in the State, make the showing required by the Act of September 5, 1914 (38 Stat. 712; 43 U.S.C. 182) explained in § 2513.1 (a) to (d) of this chapter.

(c) *Additional entries.* Any person otherwise qualified who has made final proof on an entry for less than 160 acres may make an additional entry for contiguous land under the act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213), or for noncontiguous land under the act of March 2, 1889 (25 Stat. 854; 43 U.S.C. 214) for such area as when added to the area previously entered will not exceed 160 acres. The requirements in connection with such entries are set forth in §§ 2512.1 and 2512.2 of this chapter. An additional entry under the act of April 28, 1904, is not subject to commutation.

(Sec. 1, 30 Stat. 409, as amended; 43 U.S.C. 270)

§ 2567.5 Residence, cultivation requirements.

(a) *Residence*—(1) *Establishment.* Residence must be established upon the claim within 6 months after the date of the entry or the recording of the location notice, as the case may be; but an extension of not more than 6 months may be allowed upon application duly filed, in which the entryman shows by his own statement, and that of two witnesses, that residence could not be established within the first 6 months, for climatic reasons, or on account of sickness, or other unavoidable cause.

(2) *Length.* A homestead entryman must show residence upon his claim for at least 3 years; however, he is entitled to absent himself during each year for not more than two periods making up an aggregate of 5 months, giving written notice to the proper office of the time of leaving the homestead and returning thereto.

(3) *Leave of absence.* A leave of absence for 1 year or less may be granted by the authorizing officer to the homesteader who has established actual residence on the land where failure or destruction of crops, sickness, or other unavoidable casualty has prevented him from supporting himself and those dependent upon him by cultivation of the land.

(b) *Cultivation.* There must be shown also cultivation of one-sixteenth of the area of the claim during the second year of the entry and of one-eighth during the third year and until the submission of proof, unless the requirements in this respect be reduced upon application duly filed. Cultivation, which must consist of breaking of the soil, planting or seeding, and tillage for a crop other than native grasses, must include such acts and be done in such manner as to be reasonably calculated to produce profitable results.

(c) *Habitable house.* The law provides also that the entryman must have a habitable house upon the land at the time proof is submitted.

(d) *Commutation of entries.* To the extent of not more than 160 acres an entry may be "commuted" after not less than 14 months' residence upon the land, cultivation of the area commuted to the extent required under the ordinary homestead laws and payment of $1.25 per acre; that is, the claimant must show the existence of a habitable house on the land at the time of final commutation proof, that residence for the period of not less than 14 months was actual and substantially continuous, and cultivation of one-sixteenth of the area during the second year of the entry, and, if commutation proof is submitted after the second entry year, one-eighth of the area of the third entry year and until the submission of final commutation proof. In such cases the homesteader is entitled to a 5 months' leave of absence in each year, but cannot have credit as residence for such period, since actual presence on the land for not less than 14 months is required. However, an additional entry under the act of April 28, 1904 (33 Stat. 527; 43 U.S.C. 213), is not subject to commutation.

§ 2567.6 Surveys.

(a) *Without expense to settler.* The land included in a settlement claim may be surveyed without expense to the settler, provided he submits, within five years from the date of the filing of notice of settlement claim in the proper office, an application to enter on a form approved by the Director and acceptable final or commuted homestead proof as required by § 2567.7(a).

(b) *At expense of settler.* A settler who wishes to secure earlier action in the matter of survey may have a survey made at his own expense by a deputy surveyor appointed by the authorized officer of the Bureau of Land Management.

(c) *Application to enter land included in special survey.* After a special survey has been made, in accordance with paragraph (b) of this section, application to enter should be made as in the case of other settlements on surveyed lands.

§ 2567.7 Proof.

(a) *Submission.* (1) Proof may be submitted without previous notice of intention by publication.

(2) Whenever the claimant is ready to submit proof, he may appear, with two witnesses having knowledge of the facts, before either the authorizing officer of the proper office for the district in which the land is situated or before any other officer authorized to administer oaths in homestead cases and submit proof of his residence, cultivation, and improvements on the land. The proof testimony must be filed in the proper office.

(3) Where the proof establishes that the entryman cannot effect timely compliance with the law, the entry must be canceled unless statutory authority permits the granting of an extension of time or other relief.

(b) *Publication and posting.* (1) Where a special survey has been made, the notice of proof must give the survey number of the land, and it must be published once a week for nine consecutive weeks, in accordance with § 1824.3 of this chapter, at the expense of the applicant, in a newspaper designated by the authorizing officer as being one of general circulation nearest the land. Moreover, during the period of publication the entryman must keep a copy of the plat, and of his notice of having made proof, posted in a conspicuous place on the land.

(2) Where the public system of surveys has been extended over the land, and the claimant has an entry allowed in conformity therewith, notice must be published once a week for 5 consecutive weeks in accordance with § 1824.3 of this chapter. The authorizing officer must cause a copy of the notice to be posted in his office during the entire period of publication.

(c) *Effect of transfer of land before proof.* In Alaska, as elsewhere in the United States, a forfeiture of the claim results from a transfer of any part of the land or of any interest therein before the submission of the proof, with certain exceptions specified by law. In the State transfers for church, cemetery, or school purposes to the extent of 5 acres and for railroad rights of way across the land having an extreme width of 200 feet are permitted.

(d) *Adverse claim.* (1) In conformity with provision contained in section 10 of the act of May 14, 1898 (30 Stat. 413; 48 U.S.C. 359), during the period of posting and publication or within 30 days thereafter any person, corporation, or association, having or asserting any adverse interest in or claim to, the tract of land or any part thereof sought to be acquired, may file in the proper office where the proof is pending, under oath, an adverse claim setting forth the nature and extent thereof, and such adverse claimant shall, within 60 days after the filing of such adverse claim, begin action to quiet title, in a court of competent jurisdiction in Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of the court.

(2) Where such adverse claim is filed, action on the proof will be suspended until final adjudication of the rights of the parties in the court or until it has been shown that the adverse claimant did not commence an action in the court within the time allowed.

(3) Any protest which may be filed which does not show that the protestant intends to commence an action to quiet title, as stated, and any contest which may be filed will be disposed of by the authorizing officer in accordance with Parts 1840 and 1850 of this chapter.

§ 2567.8 Loans.

(a) *Mortgage loans on existing homestead entries.* A homestead entryman who desires to secure a loan on an existing homestead entry, or a homestead applicant who wishes to make a homestead entry for lands in a canceled or relinquished homestead entry subject to a mortgage lien held by the United States acting through the Secretary of Agriculture under the act of October 19, 1949 (63 Stat. 883, 7 U.S.C. Supp. III secs. 1006a, 1006b), should proceed in accordance with § 2511.0-9(a) of this chapter.

(b) *Mortgage liens.* A mortgage lien held by the United States acting through the Secretary of Agriculture shall not extend to mineral deposits in the lands, which have been or may be reserved to the United States pursuant to law.

Group 2600—Disposition; Grants

PART 2610—CAREY ACT GRANTS

Subpart 2610—Carey Act Grants, General

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Subpart 2611—Segregation Under the Carey Act—Procedures

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Subpart 2612—Issuance of Patents

2612.1 Lists for patents.
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Subpart 2613—Preference Right of Entry Upon Restoration

2613.0-3 Authority.
2613.1 Allowance of filing of applications.
2613.2 Applications.
2613.3 Allowance of preference right.

AUTHORITY: Sec. 4 of the Act of August 18, 1894 (28 Stat. 422), as amended (43 U.S.C. 641), known as the Carey Act.

SOURCE: 45 FR 34232, May 21, 1980, unless otherwise noted.

Subpart 2610—Carey Act Grants, General

§ 2610.0-2 Objectives.

The objective of section 4 of the Act of August 18, 1894 (28 Stat. 422), as amended (43 U.S.C. 641 et seq.), known as the Carey Act, is to aid public land States in the reclamation of the desert lands therein, and the settlement, cultivation, and sale thereof in small tracts to actual settlers.

§ 2610.0-3 Authority.

(a) The Carey Act authorizes the Secretary of the Interior, with the approval of the President, to contract and agree to grant and patent to States, in which there are desert lands, not to exceed 1,000,000 acres of such lands to each State, under the conditions specified in the act. The Secretary is authorized to contract and agree to grant and patent additional lands to certain States. After a State's application for a grant has been approved by the Secretary, the lands are segregated from the public domain for a period of from 3 to 15 years, the State undertaking within that time to cause the reclamation of the lands by irrigation. The lands, when reclaimed, are patented to the States or to actual settlers who are its assignees. If the lands are patented to the State, the State transfers title to the settler. Entries are limited to 160 acres to each actual settler.

(b) The Act of June 11, 1896 (29 Stat. 434; 43 U.S.C. 642), authorizes liens on the land for the cost of construction of the irrigation works, and permits the issuance of patents to States for particular tracts actually reclaimed without regard to settlement or cultivation.

(c) The Act of March 1, 1907 (34 Stat. 1056), extends the provisions of the Carey Act to the former Southern Ute Indian Reservation in Colorado.

(d) The Joint Resolution approved May 25, 1908 (35 Stat. 577), authorizes grants to the State of Idaho of an additional 1,000,000 acres.

(e) The Act of May 27, 1908 (35 Stat. 347; 43 U.S.C. 645), authorizes grants of an additional 1,000,000 acres to the State of Idaho and the State of Wyoming.

(f) The Act of February 24, 1909 (35 Stat. 644; 43 U.S.C. 647), extends the provisions of the Carey Act to the former Ute Indian Reservation in Colorado.

(g) The Act of February 16, 1911 (36 Stat. 913), extends the Carey Act to the former Fort Bridger Military Reservation in Wyoming.

(h) The Act of February 21, 1911 (36 Stat. 925; 43 U.S.C. 523-524), permits the sale of surplus water by the United States Bureau of Reclamation for use upon Carey Act lands.

(i) The Act of March 4, 1911 (36 Stat. 1417; 43 U.S.C. 645), authorizes grants to the State of Nevada of an additional 1,000,000 acres.

(j) The Joint Resolution of August 21, 1911 (37 Stat. 38; 43 U.S.C. 645), authorizes grants to the State of Colorado of an additional 1,000,000 acres.

§ 2610.0-4 Responsibilities.

(a) The authority of the Secretary of the Interior to approve the applications provided for in this part, has been delegated to the Director of the Bureau of Land Management and redelegated to State Directors of the Bureau of Land Management.

(b) The grant contact must be signed by the Secretary of the Interior, or an officer authorized by him, and approved by the President.

§ 2610.0-5 Definitions.

As used in the regulations of this part:

(a) "Actual settler" means a person who establishes a primary residence on the land.

(b) "Cultivation" means tilling or otherwise preparing the land and keeping the ground in a state favorable for the growth of ordinary agricultural crops, and requires irrigation as an attendant act.

(c) "Desert lands" means unreclaimed lands which will not, without irrigation, produce any reasonably remunerative agricultural crop by usual means or methods of cultivation. This includes lands which will not, without irrigation, produce paying crops during a series of years, but on which crops can be successfully grown in alternate years by means of the so-called dry-farming system. Lands which produce native grasses sufficient in quantity, if ungrazed by grazing animals, to make an ordinary crop of hay in usual seasons, are not desert lands. Lands which will produce an agricultural crop of any kind without irrigation in amount sufficient to make the cultivation reasonably remunerative are not desert. Lands containing sufficient moisture to produce a natural growth of trees are not to be classed as desert lands.

(d) "Economic feasibility" means the capability of an entry to provide an economic return to the settler sufficient to provide a viable farm enterprise and assure continued use of the land for farming purposes. Factors considered in determining feasibility may include the cost of developing or acquiring water, land reclamation costs, land treatment costs, the cost of construction or acquisition of a habitable residence, acquisition of farm equipment, fencing and other costs associated with a farm enterprise, such as water delivery, seed, planting, fertilization, harvest, etc.

(e) "Grant contract" means the contract between a State and the United States which sets the terms and conditions which the State or its assignees shall comply with before lands shall be patented.

(f) "Irrigation" means the application of water to the land for the purpose of growing crops.

(g) "Ordinary agricultural crops" means any agricultural product to which the land under consideration is generally adapted, and which would return a fair reward for the expense of producing them. Ordinary agricultural crops do not include forest products, but may include orchards and other plants which cannot be grown on the land without irrigation and from which a profitable crop may be harvested.

(h) "Reclamation" means the establishment of works for conducting water in adequate volume and quantity to the land so as to render it available for distribution when needed for irrigation and cultivation.

(i) "Segregation" means the action under the Act of August 19, 1894 (39 Stat. 422), as amended (43 U.S.C. 641), by which the lands are reserved from the public domain and closed to application or entry under the public land laws, including location under the mining laws.

(j) "Smallest legal subdivision" means a quarter quarter section (40 acres).

§ 2610.0-7 Background.

The Carey Act authorizes the Secretary of the Interior, with the approval of the President, to contract and agree to grant and patent to States, in which there are desert lands, not exceeding 1 million acres of such lands to each State, as the State may cause to be reclaimed. The State shall also cause not less than 20 acres of each 160 acre tract to be cultivated by actual settlers. A number of amendments allowed additional acreages for certain States. Colorado, Nevada and Wyoming were allowed up to 2 million acres. Idaho was allowed up to 3 million acres.

§ 2610.0-8 Lands subject to application.

(a) The lands shall be unreclaimed desert lands capable of producing ordinary agricultural crops by irrigation.

(b) The lands shall be nonmineral, except that lands withdrawn, classified or valuable for coal, phosphate, nitrate, potash, sodium, sulphur, oil, gas or asphaltic minerals may be applied for subject to a reservation of such deposit, as explained in subchapter 2093 of this title.

(c) Lands embraced in mineral permits of leases, or in applications for such permits or leases, or classified, withdrawn or reported as valuable for any leasable mineral, or lying within the geologic structure of a field are subject to the provisions of §§ 2093.0-3 through 2093.0-7 of this title.

(d) A project or individual entry may consist of 2 or more noncontiguous parcels. However, noncontiguous lands should be in a pattern compact enough to be managed as an efficient, economic unit.

Subpart 2611—Segregation Under the Carey Act—Procedures

§ 2611.1 Applications.

§ 2611.1-1 Applications for determination of suitability and availability of lands.

The first step in obtaining segregation of lands for Carey act development shall be the filing of an application in the appropriate State office of the Bureau of Land Management requesting that the authorized officer make a determination regarding the suitability and availability of lands for a Carey Act Project. The application shall consist of a map of lands proposed to be reclaimed, containing sufficient detail to clearly show which lands are included in the Project, the mode of irrigation and the source of water. The map shall bear a certification by the State official authorized to file the application that the lands are applied for subject to the provisions of Subpart 2093 of this title.

§ 2611.1-2 Determination of suitability and availability of lands.

The authorized officer shall evaluate the suitability and availability of the lands for agricultural development under the Carey Act utilizing the criteria and procedures in Part 2400 of this title.

§ 2611.1-3 Application for grant contract.

If it is determined that lands are suitable and available for agricultural development under the Carey Act, the State shall submit the following, in duplicate, to the appropriate Bureau of Land Management office (43 CFR Part 1821):

(a) A plan of development that includes:

(1) A report on the economic feasibility of the project and the availability of an adequate supply of water to thoroughly irrigate and reclaim the lands to raise ordinary agricultural crops.

(2) Procedures for avoiding or mitigating adverse environmental impacts and for rehabilitation of the lands if all or part of the project fails.

(3) A map in sufficient detail to show the proposed major irrigation works and the lands to be irrigated. Map material and dimensions shall be as prescribed by the authorized officer and shall be drawn to a scale not greater than 1,000 feet to 1 inch. The map shall connect canals, pipelines larger than 8 inches in diameter, reservoirs and other major facilities in relationship to public survey lines or corners, where present. The map shall show other data as needed to enable retracement of the proposed major irrigation works on the ground. The en-

gineer who prepared the map shall certify that the system depicted therein is accurately and fully represented and that the system proposed is sufficient to fully reclaim the lands.

(4) Additional data concerning the specifics of the plan and its feasibility as required by the authorized officer.

(b) A grant contract in a form prescribed by the Director, Bureau of Land Management, in duplicate, signed by the authorized State official, shall also be filed. A carbon copy of the contract shall not be accepted. The person who signs the contract on behalf of the State shall furnish evidence of his/her authority to do so. The contract shall obligate the State to all terms and conditions of the Act and all specifications of the approved plan, and shall obligate the United States to issue patents to the State upon actual reclamation of the lands according to the plan or to settlers who are its assignees, as provided in Subpart 2093 of this title.

§ 2611.1-4 Approval of plan and contract.

(a) After making a determination that the proposed project is economically feasible, that sufficient water can be furnished to thoroughly irrigate and reclaim the lands, that measures to avoid or mitigate adverse environmental impacts and to rehabilitate the lands if the project fails are adequate, and that State laws and regulations concerning the disposal of the lands to actual settlers are not contrary to the provisions and restrictions of the Act, the authorized officer may approve the plan. Before making this determination and approving the plan, the authorized officer may, in agreement with the State, modify the plan.

(b) Upon approval of the plan, the grant contract may be signed by the Secretary of the Interior, or an officer in the Office of the Secretary who has been appointed by the President, by and with the advice and consent of the Senate. A notice that the contract has been signed and the lands are segregated shall be published in the FEDERAL REGISTER. As a condition to entering into the contract, the Secretary or his delegate may require additional terms and conditions. If such is done, the new contract form shall be returned to the State for signing.

(c) The contract is not final and binding until approved by the President.

(d) After the plan has been approved, and the contract signed and approved, the lands may be entered by the State and its agents for reclamation and for residency, if appropriate.

§ 2611.1-5 Priority of Carey Act applications.

Properly filed applications under § 2611.1-1. or § 2611.1-3 of this title shall have priority over any subsequently filed agricultural applications for lands within the project boundaries. However, the rejection of a Carey Act application will not preclude subsequent agricultural development under another authority.

§ 2611.2 Period of segregation.

(a) The States are allowed 10 years from the date of the signing of the contract by the Secretary in which to cause the lands to be reclaimed. If the State fails in this, the State Director may, in his discretion, extend the period for up to 5 years, or may restore the lands to the public domain at the end of the 10 years or any extension thereof. If actual construction of the reclamation works has not been commenced within 3 years after the segregation of the land or within such further period not exceeding 3 years as may be allowed for that purpose by the State Director, the State Director may, in his discretion, restore the lands to the public domain.

(b) All applications for extensions of the period of segregation must be submitted to the State Director. Such applications will be entertained only upon the showing of circumstances which prevent compliance by the State with the requirements within the time allowed, which, in the judgment of the State Director, could not have been reasonably anticipated or guarded against, such as the distruction of irrigation works by storms, floods, or other unavoidable casualties, unforeseen structural or physical difficulties encountered in the operations, or errors in surveying and locating needed ditches, canals, or pipelines.

§ 2611.3 Rights-of-way over other public lands.

When the canals, ditches, pipelines, reservoirs or other facilities required by the plan of development will be located on public lands not applied for by the State under the Carey Act, an application for right-of-way over such lands under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.), shall be filed separately by the proposed constructor. Rights-of-way shall be approved simultaneously with the approval of the plan, but shall be conditioned on approval of the contract.

Subpart 2612—Issuance of Patents

§ 2612.1 Lists for patents.

When patents are desired for any lands that have been segregated, the State shall file in the BLM State Office a list of lands to be patented, with a certificate of the presiding officer of the State land board, or other officer of the State who may be charged with the duty of disposing of the lands which the State may obtain under the law, that the lands have been reclaimed according to the plan of development, so that a permanent supply of water has been made available for each tract in the list, sufficient to thoroughly reclaim each 160-acre tract for the raising of ordinary agricultural crops. If patents are to be issued directly to assignees, the list shall include their names, the particular lands each claims, and a certification by the State that each is an actual settler and has cultivated at least 20 acres of each 160-acre tract. If there are portions which cannot be reclaimed, the nature, extent, location, and area of such portions should be fully stated. If less than 5 acres of a smallest legal subdivision can be reclaimed and the subdivision is not essential for the reclamation, cultivation, or settlement of the lands; such legal subdivision must be relinquished, and shall be restored to the public domain as provided in a notice published in the FEDERAL REGISTER.

§ 2612.2 Publication of lists for patents.

(a) *Notice of lists.* When a list for patents is filed in the State Office, it shall be accompanied by a notice of the filing, in duplicate, prepared for the signature of the State Director, or his delegate, fully incorporating the list. The State shall cause this notice to be published once a week for 5 consecutive weeks, in a newspaper of established character and general circulation in the vicinity of the lands, to be designated by the State Director, as provided in Subpart 1824 of this chapter.

(b) *Proof of publication.* At the expiration of the period of publication, the State shall file in the State Office proof of publication and of payment for the same.

§ 2612.3 Issuance of patents.

Upon the receipt of proof of publication such action shall be taken in each case as the showing may require, and all tracts that are free from valid protest, and respecting which the law and regulations and grant contract have been complied with, shall be patented to the State, or to its assignees if the lands have been settled and cultivated. If patent issues to the State, it is the responsibility of the State to assure that the lands are cultivated and settled. If the State does not dispose of the patented lands within 5 years to actual settlers who have cultivated at least 20 acres of each 160 acre tract, or if the State disposes of the patented lands to any person who is not an actual settler or has not cultivated 20 acres of the 160 acre tract, action may be taken to revest title in the United States.

Subpart 2613—Preference Right Upon Restoration

§ 2613.0-3 Authority.

The Act approved February 14, 1920 (41 Stat. 407; 43 U.S.C. 644), provides that upon restoration of Carey Act lands from segregation, the Secretary is authorized, in his discretion, to allow a preference right of entry under other applicable land laws to any Carey Act entryman on any such lands which such person had entered under and pursuant to the State laws providing for the administration of the grant and upon which such person had established actual, bona fide residence or had made substantial and permanent improvements.

§ 2613.1 Allowance of filing of applications.

(a) *Status of lands under State laws.* Prior to the restoration of lands segregated under the Carey Act, the Bureau of Land Management shall ascertain from the proper State officials whether any entries have been allowed under the State Carey Act laws on any such lands, and if any such entries have been allowed, the status thereof and action taken by the State with reference thereto.

(b) *No entries under State laws.* If it is shown with reasonable certainty, either from the report of the State officers or by other available information, that there are no entries under State law, then the Act of February 14, 1920, shall not be considered applicable to the restoration of the lands. Lands shall be restored as provided in a notice published in the FEDERAL REGISTER.

(c) *Entries under State laws.* If it appears from the report of the State officials or otherwise that there are entries under the State law which may properly be the basis for preference rights under this act, in the order restoring the lands the authorized officer may, in his discretion, allow only the filing of applications to obtain a preference right under the Act of February 14, 1920.

§ 2613.2 Applications.

(a) Applications for preference rights under the Act of February 14, 1920, shall be filed within 90 days of the publication of the restoration order.

(b) Applications shall be on a form approved by the Director and shall set forth sufficient facts to show that the applicant is qualified under the act and these regulations. The application must be subscribed and sworn to before a notary public.

(c) *Persons qualified.* The Act of February 14, 1920, applies only to cases of entries in good faith in compliance with the requirements of State law, with a view to reclaiming the land and procuring title pursuant to the provisions of the Carey Act; the act does not apply to cases where persons have settled on or improved the segregated land, either with the approval of the State authorities or otherwise, not pursuant to State law or not in anticipation of reclaiming the lands and procuring title under the Carey Act but in anticipation of initiating some kind of a claim to the land on its restoration because of failure of the project or cancellation of the segregation.

(d) *Persons not qualified.* The Act of February 14, 1920, does not apply to cases where the applicant's entry has been canceled by the State or forfeited for failure to perfect the entry according to State law, unless the failure is the result of conditions which culminated in the elimination of the lands from the project if the State has allowed a subsequent entry for the same lands, this shall be conclusive evidence that the default was the fault of the State entryman whose entry was forfeited or canceled.

§ 2613.3 Allowance of preference right.

If a person's application is approved, such person shall have 90 days to submit an application for entry under another land law, and shall be entitled to a preference right of entry under other law if and when the lands are determined to be suitable for entry under such law pursuant to the regulations found in Part 2400 of this chapter.

PART 2620—STATE GRANTS

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AUTHORITY: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

Subpart 2621—Indemnity Selections

SOURCE: 35 FR 9607, June 13, 1970, unless otherwise noted.

§ 2621.0-2 Objectives and Background.

Generally, grants made by Statehood Acts to the various States of school sections 16 and 36, and in addition, sections 2 and 32 in Arizona, New Mexico, and Utah, attach to a school sections on the date of acceptance or approval of the plat of survey thereof. If the acceptance or approval was prior to the granting act, or to the date of admission of the State into the Union, the grant attaches either on the date of approval of the act or the date of admission into the Union, whichever is the later date. However, if on the date the grant would otherwise attach, the land is appropriated under some applicable public land law, the grant does not attach, and the State is entitled to indemnity therefor as provided in the regulations in this subpart.

§ 2621.0-3 Authority.

(a) Sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851, 852), referred to in §§ 2621.0-3 to 2621.4 of this subpart as "the law," authorize the public land States except Alaska to select lands (or the retained or reserved interest of the United States in lands which have been disposed of with a reservation to the United States of all minerals, or any specified mineral or minerals, which interest is referred to in §§ 2621.0-3 to 2621.4 as the "mineral estate") of equal acreage within their boundaries as indemnity for grant lands in place lost to the States because of appropriation before title could pass to the State or because of natural deficiencies resulting from such causes as fractional sections and fractional townships.

(b) The law provides that indemnity for lands lost because of natural deficiencies will be selected from the unappropriated, nonmineral, public lands, and that indemnity for lands lost before title could pass to the State will be selected from the unappropriated, public lands subject to the following restrictions:

(1) No lands mineral in character may be selected except to the extent that the selection is made as indemnity for mineral lands.

(2) No lands on a known geologic structure of a producing oil or gas field may be selected except to the extent that the selection is made as indemnity for lands on such a structure.

(c) The law also provides that lands subject to a mineral lease or permit may be selected, but only if the lands are otherwise available for selection, and if none of the lands subject to that lease or permit are in producing or producible status. It permits the selection of lands withdrawn, classified, or reported as valuable for coal, phosphate, nitrate, potash, oil, gas, asphaltic minerals, oil shale, sodium, and sulphur and lands withdrawn by Executive Order No. 5327 of April 15, 1930, if such lands are otherwise available for, and subject to, selection: *Provided*, That except where the base lands are mineral in character, such minerals are reserved to the United States in accordance with and subject to the regulations in Subpart 2093. Except for the withdrawals mentioned in this paragraph and for lands subject to classification under section 7 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315f), as amended, the law does not permit the selection of withdrawn or reserved lands.

(d) Subsection (b) of the section 2276 of the Revised Statutes, as amended, sets forth the principles of adjustment where selections are made to compensate for deficiencies of school lands in fractional townships.

§ 2621.1 Applications for selection.

(a) Applications for selection must be made on a form approved by the Director, and must be accompanied by a petition on a form approved by the Director properly executed. However, if the lands described in application have been already classified and opened for selection pursuant to the regulations of this part, no petition is required.

(b) Applications for selection under the law will be made by the proper selecting agent of the State and will be filed, in duplicate, in the proper office in the State or for lands or mineral estate in a State in which there is no office, will be filed in accordance with the provisions of § 1821.2 of this chapter.

(c) Applications must be accompanied by the following information:

(1) A reference to the act of August 27, 1958 (72 Stat. 928), as amended.

(2) A certificate by the selecting agent showing:

(i) All facts relative to medicinal or hot springs or other waters upon the selected lands. (This provision does not apply insofar as the application involves the selection of the mineral estate.)

(ii) That indemnity has not been previously granted for the assigned base lands and that no other selection is pending for such assigned base.

(3) A statement describing the mineral or nonmineral character of each smallest legal subdivision of the base and selected lands or mineral estate.

(4) A certificate by the officer or officers charged with the care and disposal of school lands that no instrument purporting to convey, or in any way incumber, the title to any of the land used as base or bases, has been issued by the State or its agents.

(d) In addition to the requirements of paragraph (c) of this section, applications for selection must conform with the following rules:

(1) The selected land and base lands must be described in accordance with the official plats of survey except that unsurveyed lands will be described in terms of protracted surveys as officially approved in accordance with 43 CFR 3101.1-4(d)(1). If the unsurveyed lands are not covered by protracted surveys the lands must be described in terms of their probable legal description, if and when surveyed in accordance with the rectangular system of public land surveys, or if the State Director gives written approval therefor, by a metes and bounds description adequate to identify the lands accurately.

(2) Separate base or bases do not have to be assigned to each smallest legal subdivision of selected surveyed lands or mineral estate and to each tract of unsurveyed lands upon application. However, prior to final approval of the selection, separate base or bases shall be assigned. Assignment of the smallest actual or probable legal subdivision as base will constitute an election to take indemnity for the entire subdivision and is a waiver of the State's rights to such subdivision, except that any remaining balance of acreage may be used as base in other selections.

(3) For purposes of selecting unsurveyed land a protracted section shall be considered to be a smallest legal

subdivision except where the State Director finds otherwise.

(4) The cause of loss of the base lands to the State must be specifically stated for each separate base.

(Secs. 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851, 852))

[35 FR 9607, June 13, 1970. Redesignated and amended at 46 FR 24135, Apr. 29, 1981]

§ 2621.2 Publication and protests.

(a) The State will be required to publish once a week for five consecutive weeks in accordance with § 1824.3 of this chapter, at its own expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file in the appropriate office their objections to the issuance of a certification to the State for lands selected under the law. A protestant must serve on the State a copy of the objections and furnish evidence of service to the appropriate land office.

(b) The State must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

[35 FR 9607, June 13, 1970. Redesignated at 46 FR 24135, Apr. 29, 1981]

§ 2621.3 Certifications; mineral leases and permits.

(a) Certifications will be issued for all selections approved under the law by the authorized officer of the Bureau of Land Management.

(b) Where all the lands subject to a mineral lease or permit are certified to a State, or if, where the State has previously acquired title to a portion of the lands subject to a mineral lease or permit, the remaining lands in the lease or permit are certified to the State, the State shall succeed to the position of the United States thereunder. Where a portion of the lands subject to any mineral lease or permit are certified to a State, the United States shall retain for the duration of the lease or permit the mineral or minerals for which the lease or permit was issued.

[35 FR 9607, June 13, 1970. Redesignated at 46 FR 24135, Apr. 29, 1981]

§ 2621.4 Application for selection of unsurveyed lands.

(a) The authorized officer will reject any application for selection of unsurveyed lands if: (1) The costs of survey of the lands would grossly exceed the average per-acre costs of surveying public lands under the rectangular system of surveys in the State in which the lands are located, or (2) if the conveyance of the lands would create serious problems in the administration of the remaining public lands or resources thereof or would significantly diminish the value of the remaining public lands. The term "remaining public lands" means the public lands from which the applied-for lands would be separated by survey.

(b) In addition to the provisions of this section, applications for selection of unsurveyed lands are subject to the provisions of Subpart 2400.

[35 FR 9607, June 13, 1970. Redesignated at 46 FR 24135, Apr. 29, 1981]

Subpart 2622—Quantity and Special Grant Selections

§ 2622.0-1 Purpose and scope.

(a) Sections 2622.0-1 to 2622.0-8 apply generally to quantity and special grants made to States other than Alaska.

(b) The regulations in §§ 2621.2 to 2621.4 apply to quantity and special grants with the following exceptions and modifications:

(1) Sections 2621.4(b) and 2621.2(c)(4); and §§ 2621.2(d) (3) and (4) and all references to base lands and to mineral estate do not apply.

(2) Section 2621.2(c)(1) is modified to require reference to the appropriate granting act; § 2621.2(c)(3) is modified to require a statement testifying to the nonmineral character of each smallest legal subdivision of the selected land; § 2621.2(d)(2) is modified to permit as much as 6,400 acres in a single selection; and § 2621.2 is modified to require a certificate that the selection and those pending, together with those approved, do not exceed the total amount granted for the stated purpose of the grant.

[35 FR 9608, June 13, 1970]

§ 2622.0-8 Lands subject to selection.

Selections made in satisfaction of quantity and special grants can generally be made only from the vacant, unappropriated, nonmineral, surveyed public lands within the State to which the grant was made. If the lands are otherwise available for selection, the States may select lands which are withdrawn, classified, or reported as valuable for coal, phosphate, nitrate, potash, oil, gas, asphaltic minerals, sodium, or sulphur, provided that the appropriate minerals are reserved to the United States in accordance with and subject to the regulations of Subpart 2093.

[35 FR 9608, June 13, 1970]

Subpart 2623—School Land Grants to Certain States Extended to Include Mineral Sections

Source: 35 FR 9609, June 18, 1970, unless otherwise noted.

§ 2623.0-3 Authority.

(a) The first paragraph of section 1 of the act approved January 25, 1927 (44 Stat. 1026; 43 U.S.C. 870), reads as follows:

> That, subject to the provisions of paragraphs (a), (b), and (c) of this section, the several grants to the States of numbered sections in place for the support or in aid of common or public schools be, and they are hereby, extended to embrace numbered school sections mineral in character, unless land has been granted to and/or selected by and certified or approved, to any such State or States as indemnity or in lieu of any land so granted by numbered sections.

(b) The beneficiaries of this grant are the States of Arizona, California, Colorado, Idaho, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. The grant also extends to the unsurveyed school sections reserved, granted, and confirmed to the State of Florida by the act of Congress approved September 22, 1922 (42 Stat. 1017; 16 U.S.C. 483, 484).

(c) The additional grant thus made, subject to all the conditions in the statute making same, applies to school-section lands known to be of mineral character at the effective date thereof as hereinafter defined. It does not include school-section lands nonmineral in character, those not known to be mineral in character at time of grant, but afterwards found to contain mineral deposits, such lands not being excepted from the grants theretofore made (Wyoming et al. v. United States, 255 U.S. 489-500, 501, 65 L. ed. 742-748), nor does it include lands in numbered school sections in lieu of or as indemnity for which lands were conveyed to the States first above named, or to the State of Florida with respect to school-section lands coming within the purview of the act of September 22, 1922, prior to January 25, 1927.

(d) Determinations made prior to January 25, 1927, by the Secretary of the Interior or the Commissioner of the General Land Office to the effect that lands in school sections were excepted from school-land grants because of their known mineral character do not, of themselves, prevent or affect in any way the vesting of title in the States pursuant to the provisions of the statute making the additional grant.

(e) Subsection (a) of section 1 of the act provides:

> That the grant of numbered mineral sections under this Act shall be of the same effect as prior grants for the numbered nonmineral sections, and title to such numbered mineral sections shall vest in the States at the time and in the manner and be subject to all the rights of adverse parties recognized by existing law in the grants of numbered nonmineral sections.

§ 2623.0-7 Cross reference.

For national forests and national parks, see § 1821.7-2 of this chapter. For naval petroleum reserves, see § 3102.2-2 of this chapter.

§ 2623.0-8 Lands subject to selection.

(a) *Lands included in grant.* (1) Section 2 of the act of January 25, 1927 (44 Stat. 1027; 43 U.S.C. 871) reads as follows:

> Sec. 2. That nothing herein contained is intended or shall be held or construed to increase, diminish, or affect the rights of States under grants other than for the support of common or public schools by num-

bered school sections in place, and this Act shall not apply to indemnity of lieu selections or exchanges or the right hereafter to select indemnity for numbered school sections in place lost to the State under the provisions of this or other Acts, and all existing laws governing such grants and indemnity or lieu selections and exchanges are hereby continued in full force and effect.

(2) The only grants affected in any way by the provisions of the act of January 25, 1927, are those of numbered sections of land in place made to the States for the support of common or public schools. The adjudication of claims to land asserted under other grants, for indemnity or lieu lands and exchanges of lands, will proceed as theretofore, being governed by the provisions of existing laws applicable thereto. The States will be afforded full opportunity, however, if the facts and conditions are such as to authorize such action, either to assign new base in support of or to withdraw pending unapproved indemnity school land selections in support of which mineral school-section lands have been tendered as base.

(b) *Lands excluded from grant.* (1) Subsection (c) of section 1 of the act of January 25, 1927, provides:

> That any lands included within the limits of existing reservations of or by the United States, or specifically reserved for water-power purposes, or included in any pending suit or proceedings in the courts of the United States, or subject to or included in any valid application, claim, or right initiated or held under any of the existing laws of the United States, unless or until such application, claim, or right is relinquished or canceled, and all lands in the Territory of Alaska are excluded from the provisions of this act.

(2) School-section lands included within the limits of existing reservations of or by the United States, specifically reserved for waterpower purposes, or included in any suit or proceedings in the courts of the United States, prior to January 25, 1927, and all lands in Alaska are excluded from the provisions of the act. (§ 2623.4)

(3) The words "existing reservation" as used in subsection (c) are construed generally and subject to specific determination in particular cases if the need therefor shall arise, as including Indian and military reservations, naval and petroleum reserves, national parks, national forests, stock driveways, reservations established under the act of June 25, 1910 (36 Stat. 847; 43 U.S.C. 141-143), as amended by the act of August 24, 1912 (37 Stat. 497; 43 U.S.C. 142), and all forms of Executive withdrawal recognized and construed by the Department of the Interior as reservations, existent prior to January 25, 1927.

§ 2623.1 Effective date of grant.

Grants to the States of school lands in place (the numbered sections), of the character and status subject thereto, as a rule, are effective and operate to vest title upon the date of the approval of the statute making the grant or the date of the admission of the State into the Union, as to lands then surveyed, and as to the lands thereafter surveyed upon the date of the acceptance of the survey thereof by the Director of the Bureau of Land Management. (United States v. Morrison, 240 U.S. 192, 60 L. ed. 599; United States v. Sweet, 245 U.S. 563, 62 L. ed. 473; Wyoming et al. v. United States, supra.) It is held, therefore, that the grant made by the first paragraph of section 1 of the act of January 25, 1927, subject to the provision therein with respect to indemnity or lieu lands, to the provisions of subsections (b) and (c) of said section 1 and following the plain provisions of subsection (a) thereof is effective upon the date of the approval of the act (January 25, 1927) as to lands then surveyed and the survey thereof accepted by the Director of the Bureau of Land Management and as to the unsurveyed school sections in the State of Florida granted to that State by the act of September 22, 1922. The grant, as to other lands thereafter surveyed, subject to the same provisions is effective upon the acceptance of the survey thereof as above indicated.

§ 2623.2 Claims protected.

(a) Valid applications, claims, or rights protected by the provisions of subsection (c) of section 1 of the act of January 25, 1927, include applications, entries, selections, locations, permits, leases, and other forms of filing, initiated or held pursuant to existing laws of the United States prior to January 25, 1927, embracing known mineral school-section lands then surveyed and otherwise within the terms of the additional grant, and as to lands thereafter surveyed, valid applications, claims, or rights so initiated or held prior to the date of the acceptance of the survey. The additional grant to the State will attach upon the effective date of the relinquishment or cancellation of any claim, so asserted, in the absence of any other valid existing claim for the land and if same be then surveyed. Should the validity of any such claim be questioned by the State, proceedings with respect thereto by protest, contest, hearing, etc., will be had in the form and manner prescribed by existing rules governing such cases. This procedure will be followed in the matter of all protests, contests, or claims filed by individuals, associations, or corporations against the States affecting school-section lands.

§ 2623.3 States not permitted to dispose of lands except with reservation of minerals.

(a) Subsection (b) of section 1 of the act of January 25, 1927, provides:

> That the additional grant made by this Act is upon the express condition that all sales, grants, deeds, or patents for any of the lands so granted shall be subject to and contain a reservation to the State of all the coal and other minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. The coal and other mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct, the proceeds of rentals and royalties therefrom to be utilized for the support or in aid of the common or public schools: *Provided*, That any lands or minerals disposed of contrary to the provisions of this Act shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property or some part thereof is located.

(b) The lands granted to the States by the act of January 25, 1927, and the mineral deposits therein are to be disposed of by the States in the manner prescribed in subsection (b) thereof, provision being made for judicial forfeiture in case of disposal of any of the lands or minerals contrary to the provisions of the act.

§ 2623.4 Grant of mineral school sections effective upon restoration of land from reservation.

(a) By the act of January 25, 1927 (44 Stat. 1026; 43 U.S.C. 870, 871), which grants to the States certain school-section lands that are mineral in character, it is provided by subsection (c) of section 1 that where such lands are embraced within an existing reservation at the date of said act of 1927, they are thereby excluded from the grant made by said act.

(b) Under the amendatory act of May 2, 1932 (47 Stat. 140; 43 U.S.C. 870), it is provided that in the event of the restoration of the lands from such reservation, the grant to the State of such mineral school-section lands will thereupon become effective.

(c) Adjudications in connection with the State's title to school sections will be governed by the provisions of this amendatory act of May 2, 1932.

Subpart 2624—Patents for Granted School Sections

SOURCE: 35 FR 9610, June 13, 1970, unless otherwise noted.

§ 2624.0-1 Purpose.

The purpose of the act of June 21, 1934, is to provide the States, upon application, with evidence of title to the designated school-section lands granted by the Enabling Acts, by the act of January 25, 1927 (44 Stat. 1026; 43 U.S.C. 870, 871), and by any other act of Congress. The words "and by any other act of Congress" are construed to embrace any grant or grants of numbered school sections in place made to any of the public-land States.

§ 2624.0-3 Authority.

The act approved June 21, 1934 (48 Stat. 1185; 43 U.S.C. 871a) provides for the issuance of patent, upon application by a State for the numbered school sections in place granted for the support of common schools.

§ 2624.1 Application for patent.

(a) *Filing and fees.* (1) There will be no filing or conveyance fees required on the part of the States in connection with the patenting of school sections in place under this act.

(2) The act places no limitation upon the areas which may be applied for under one application. No fixed rule is necessary in regard to the area which may be included in any one patent. This matter will be handled in such manner as will permit the best results from an administrative standpoint.

(3) Application shall be filed in the proper office in accordance with the provision of § 1821.2 of this chapter.

(b) *Publication of notice; protests.* An applicant for patent under the act of June 21, 1934, will be required to publish notice of its application, at its own expense, in a daily, weekly, or semiweekly paper, published in the vicinity of the land, once each week for five consecutive weeks, and to furnish proof thereof by a statement of the publisher or foreman of the newspaper employed. Notices for publication will be prepared by the authorizing officer and will be transmitted to the proper State official for publication in the paper designated. Where publication is made in a daily paper, the notice should appear in the Wednesday issue for five consecutive weeks; if in a semiweekly paper, in either issue for five consecutive weeks. The notice should require persons asserting claims to any of the lands advertised to file protest or notice of their claims in the land office within 30 days from the date of last publication, in order to receive proper consideration before the issuance of a patent.

§ 2624.2 Date title vested in the State; conditions or limitations to be made in patent; hearings.

(a) Determination of the date when title vested in the State and of "prior conditions, limitations, easements, or rights, if any," to which the land is subject, will be ascertained from the records in the Bureau of Land Management and in the Geological Survey, and appropriate mention of such facts made in the patent.

(b) Should hearings be ordered the costs will be assessed between the parties thereto in the manner provided by Part 1850 of this chapter. Orders authorizing the issuance of patents for school sections under the act of June 21, 1934, will be signed by the Director of the Bureau of Land Management.

Subpart 2625—Swamp-land Grants

SOURCE: 35 FR 9610, June 13, 1970, unless otherwise noted.

§ 2625.0-3 Authority.

(a) Circular dated Mar. 17, 1896, containing the swamp-land laws and regulations, states:

> As soon as practicable after the passage of the swamp-land grant of September 28, 1850, viz, on the 21st of November 1850, the commissioner transmitted to the governors of the respective States to which the grant applied copies of office circular setting forth the provisions of said Act, giving instructions thereunder, and allowing the States to elect which of two methods they would adopt for the purpose of designating the swamp lands, viz:
>
> 1. The field notes of Government survey could be taken as the basis for selections, and all lands shown by them to be swamp or overflowed, within the meaning of the act, which were otherwise vacant and unappropriated September 28, 1850, would pass to the States.
>
> 2. The States could select the lands by their own agents and report the same to the United States surveyor general with proof as to the character of the same.
>
> The following States elected to make the field notes of survey the basis for determining what lands passed to them under the grant, viz: Louisiana, Michigan, and Wisconsin. Later the State of Minnesota adopted this method of settlement.
>
> The authorities of the following States elected to make their selections by their own agents and present proof that the lands selected were of the character contemplated by the swamp grant, viz: Alabama, Arkansas, Florida, Illinois, Indiana, Iowa, Mississippi, Missouri, and Ohio. Later Oregon adopted this method.
>
> The States of Alabama, Arkansas, Indiana, Mississippi, and Ohio adopted the second method at the beginning, but they changed to the first method, i.e., to the field notes of survey, as a basis of settlement, in recent years.
>
> The authorities of California did not adopt either method, and the passage of the Act of July 23, 1866, rendered such action on their part unnecessary.

In Louisiana the selections under the grant of March 2, 1849, forming the bulk of the selections in said State, are made in accordance with the terms of said act by deputy surveyors, under the direction of the United States surveyor general, at the expense of the State.

(b) The grant of swamp lands, under acts of March 2, 1849, and September 28, 1850, is a grant in praesenti. See United States Supreme Court decisions Railroad Co. v. Fremont County (9 Wall. 89, 19 L. ed. 563); Railroad Co. v. Smith (id. 95, 19 L. ed. 599); Martin v. Marks (7 Otto 345, 24 L. ed. 940); decisions of the Secretary of the Interior, December 23, 1851 (1 Lester's L.L. 549), April 25, 1862, and opinion of Attorney General, November 10, 1858 (1 Lester's L.L. 564).

(c) The act of September 28, 1850, did not grant swamp and overflowed lands to States admitted into the Union after its passage. See decision of Secretary of the Interior, August 17, 1858; Commissioner, General Land Office, May 2, 1871 (Copp's L.L. 474), affirmed by Secretary June 1, 1871, and Commissioner, General Land Office, January 19, 1874 (Copp's L.L. 473), affirmed by Secretary July 9, 1875.

(d) A State having elected to take swamp land by field notes and plats of survey is bound by them, as is also the Government. (See Secretary's decisions, October 4, 1855 (1 Lester's L.L. 553), August 1, 1859 (id. 571), December 4, 1877 (4 Copp's L.L. 149), and September 19, 1879.

(e) The Swamp-Land Acts do not contain any exception or reservation of mineral lands and none is to be implied, since at the time of their enactment the public policy of withholding mineral lands for disposition only under laws including them, was not established. Work, Secretary of the Interior v. Louisiana (269 U.S. 250, 70 L. ed. 259).

§ 2625.1 Selection and patenting of swamp lands.

(a) All lands properly selected and reported to the Bureau of Land Management as swamp will be compared with the records of the said office, and lists of such lands as are shown to be swamp or overflowed, within the meaning of the acts of March 2, 1849, and September 28, 1850 (9 Stat. 352, 519), and that are otherwise free from conflict will be made out by such office and approved.

(b) When the lists have been approved a copy of each list will be transmitted to the governor of the State, with the statement that on receipt of his request patent will issue to the State for the lands. A copy of each list also will be transmitted to the authorizing officer of the proper office for the district in which the lands are situated, and he will be requested to examine the same with the records of his office and report any conflicts found.

(c) Upon receipt of a request from the governor for patent, and a report from the authorizing officer as to status, patents will issue to the State for all the lands embraced in said lists so far as they are free from conflict.

(d) Under the provisions of the act of March 2, 1849, granting swamp lands to the State of Louisiana, a certified copy of the list approved by the Director, transmitted to the Governor, has the force and effect of a patent.

§ 2625.2 Applications in conflict with swamp-land claims.

Applications adverse to the State, in conflict with swamp-land claims, will be governed by the following rules:

(a) In those States where the adjudication of swamp-land claims is based on the evidence contained in the survey returns, applications adverse to the State for lands returned as swamp will be rejected unless accompanied by a showing that the land is non-swamp in character.

(b) In such case, the claim adverse to the State must be supported by a statement of the applicant under oath, corroborated by two witnesses, setting forth the basis of the claim and that at the date of the swamp-land grant the land was not swamp and overflowed and not rendered thereby unfit for cultivation. In the absence of such affidavit the application will be rejected. If properly supported, the application will be received and suspended subject to a hearing to determine the swamp or nonswamp character of the land, the burden of proof being upon the non-swamp claimant.

(c) In those States where the survey returns are not made the basis for adjudication of the swamp-land selections, junior applications for lands covered by swamp-land selections may be received and suspended, if supported by non-swamp affidavits corroborated by two witnesses, subject to hearing to determine the character of the land, whether swamp or non-swamp, and the burden of proof will be upon the junior applicant. Likewise, the State, if a junior applicant, may be heard upon furnishing an affidavit corroborated by two witnesses alleging that the land is swamp in character within the meaning of the swamp-land grant, in which case the burden of proof at the hearing will be upon the State.

(d) Where hearings are ordered in any such cases, the Rules of Practice governing contests will be applied, except as herein otherwise provided.

Subpart 2627—Alaska

SOURCE: 35 FR 9611, June 13, 1970, unless otherwise noted.

§ 2627.1 Grant for community purposes.

(a) *Authority.* The act of July 7, 1958 (72 Stat. 339, 340), grants to the State of Alaska the right to select, within 25 years after January 3, 1959, not to exceed 400,000 acres of national forest lands in Alaska which are vacant and unappropriated at the time of their selection and not to exceed 400,000 acres of other public lands in Alaska which are vacant, unappropriated, and unreserved at the time of their selection. The act provides that the selected lands must be adjacent to the established communities or suitable for prospective community centers and recreational areas. The act further provides that such lands shall be selected with the approval of the Secretary of Agriculture as to national forest lands and with the approval of the Secretary of the Interior as to other lands, and that no selection shall be made north and west of the line described in section 10 of the act without approval of the President or his designated representative.

(b) *Applicable regulations.* Unless otherwise indicated therein, the regulations in § 2627.3 (a) to (d) apply to the grant and selection of lands for community purposes. In addition to the requirements of § 2627.3(c), where the selected lands are national forest, the application for selection must be accompanied by a statement of the Secretary of Agriculture or his delegate showing that he approves the selection.

(c) *Approval of selections outside of national forests.* Selection of lands outside of national forests will be approved by the authorized officer of the Bureau of Land Management if, all else being regular, he finds that approval of a selection of lands adjacent to an established community will further expansion of an established community, or if the lands are suitable for prospective community centers and recreational areas.

§ 2627.2 Grant for University of Alaska.

(a) *Statutory authority.* The act of January 21, 1929 (45 Stat. 1091), as supplemented July 7, 1958 (72 Stat. 339, 343; 43 U.S.C. 852 NOTE), grants to the State of Alaska, for the exclusive use and benefit of the University of Alaska, the unsatisfied portion of 100,000 acres of vacant, surveyed, unreserved public lands in said State, to be selected by the State, under the direction and subject to the approval of the Secretary of the Interior, and subject to the conditions and limitations expressed in the act.

(b) *Applications for selection.* (1) Applications to select lands under the grant made to Alaska by the act of January 21, 1929, will be made by the proper selecting agent of the State and will be filed in the proper office of the district in which such selected lands are situated. Such selections must be made in accordance with the law and with the applicable regulations governing selection of lands by States as set forth in Part 2620.

(2) Notice of selection and publication is required as provided by § 2627.5 (b) and (c).

(3) Each list of selections must contain a reference to the act under which the selections are made and

must be accompanied by a certificate of the selecting agent showing the selections are made under and pursuant to the laws of the State of Alaska.

(4) The selections in any one list must not exceed 6,400 acres.

(5) Each list must be accompanied by a certification of the selecting agent stating that the acreage selected together with the cumulative acreage total of all prior sales for lists pending and finally approved for clear-listing or patenting does not exceed 100,000 acres.

(c) *Statement with application.* Every application for selection under the Act of January 21, 1929, must be accompanied by a duly corroborated statement making the following showing as to the lands sought to be selected.

(1) That no portion of the land is occupied for any purpose by the United States and that to the best of his knowledge and belief the land is unoccupied, unimproved, and unappropriated by any person claiming the same other than the applicant; and that at the date of the application no part of the land was claimed under the mining laws.

(2) That the land applied for does not extend more than 160 rods along the shore of any navigable water or that such restriction has been or should be waived. (See § 2094.2 of this chapter.)

(3) All facts relative to medicinal or hot springs or other waters upon the lands must be stated.

§ 2627.3 Grant for general purposes.

(a) *Statutory authority.* (1) The act of July 7, 1958 (72 Stat. 339-343), referred to in paragraphs (a) to (d) of this section as "the act," grants to the State of Alaska the right to select, within 25 years from January 3, 1959, not to exceed 102,550,000 acres from the public lands in Alaska which are vacant, unappropriated and unreserved at the time of selection. The act of September 14, 1960 (74 Stat. 1024), defines vacant unappropriated, unreserved public lands in Alaska to include the retained or reserved interest of the United States in lands which have been disposed of with a reservation to the United States of all minerals or any specified mineral or minerals.

(2) The act further provides that no selection shall be made in the area north and west of the line described in section 10 thereof (72 Stat. 345) without the approval of the President or his designated representative.

(b) *Lands subject to selection; patents; minerals.* (1) The act as amended August 18, 1959 (73 Stat. 395), provides that any lease, permit, license, or contract issued under the Mineral Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 181 et seq.), as amended, or under the Alaska Coal Leasing Act of 1914 (38 Stat. 741; 30 U.S.C. 432 et seq.), as amended, referred to in this section as "the mineral leasing acts," shall have the effect of withdrawing the lands subject thereto from selection by the State.

(2) Under the act, the State may select any vacant, unappropriated, and unreserved public lands in Alaska, whether or not they are surveyed and whether or not they contain mineral deposits. For the purposes of selection, leases, permits, licenses, and contracts issued under the mineral leasing acts of 1914 and 1920 will be considered an appropriation of lands. Where the preference provisions of § 2627.4(a) do not apply, selections by the State of lands covered by an application filed prior to the State selection will be rejected to the extent of the conflict when and if such application is allowed. Conflicting applications and offers for mineral leases and permits, except for preference right applicants, filed pursuant to the Mineral Leasing Act, whether filed prior to, simultaneously with, or after the filing of a selection under this part will be rejected when and if the selection is tentatively approved by the authorized officer of the Bureau of Land Management in accordance with paragraph (d) of this section.

(3) Patents will be issued for all selections approved under the act by the authorized officer of the Bureau of Land Management but such patents will not issue unless or until the exterior boundaries of the selected area are officially surveyed.

(4) (i) Where the State selects all the lands in a mineral lease, permit, li-

cense, or contract, issued under the mineral leasing acts of 1914 and 1920, the patent issued under the act will convey to the State all mineral deposits in the selected lands. Any such patent shall vest in the State all right, title, and interest of the United States in and to any such lease, permit, license, or contract that remains outstanding on the effective date of the patent, including the right to all rentals, royalties, and other payments accruing after that date under such lease, permit, license, or contract, and including any authority that may have been retained by the United States to modify the terms and conditions of such lease, permit, license, or contract. Issuance of patent will not affect the continued validity of any such lease, permit, license, or contract or any rights arising thereunder.

(ii) Where the State selects a portion of the lands subject to a mineral lease, permit, license, or contract issued under the mineral leasing acts of 1914 and 1920, the patent issued under the act shall reserve to the United States the mineral or minerals subject to that lease, permit, license, or contract, together with such further rights as may be necessary to the full and complete enjoyment of all rights, privileges, and benefits under or with respect to that lease, permit, license, or contracts. Upon the termination of the lease, permit, license, or contract, title to minerals so reserved to the United States shall pass to the State.

(c) *Applications for selection.* (1) Applications for selection of lands under the act will be made by the proper selecting agent of the State and will be filed, in duplicate, in the proper office of the district in which such selected lands are situated. No special form is required but it must be typewritten and must contain the following information:

(i) A reference to the act of July 7, 1958 (70 Stat. 709), as supplemented, and a statement that the selection, together with other selections under the act pending or approved, does not exceed 102,550,000 acres (400,000 acres where one of the grants for community purposes is involved).

(ii) A certificate by the selecting agent showing:

(*a*) That the selection is made under and pursuant to the laws of the State.

(*b*) The acreage selected and the cumulative acreage of all prior selection lists pending and finally approved for clear-listing or patenting.

(*c*) His official title and his authority to make the selection on behalf of the State.

(*d*) That no portion of the selected land is occupied for any purpose by the United States and that to the best of his knowledge and belief the land is unoccupied, unimproved, and unappropriated by any person claiming the land other than the applicant, and that at the date of the application no part of the land claimed or occupied under the mining laws.

(*e*) That the selected land does not extend more than 160 rods along the shore of any navigable water or that such restriction has been waived or should be waived. (§ 2094.2 of this chapter.)

(*f*) All the facts relative to medicinal or hot springs or other waters upon the selected lands.

(iii) If the selected lands are surveyed, the legal description of the lands in accordance with official plats of survey.

(iv) If the selected lands are unsurveyed and are described by approved protraction diagrams of the rectangular system of surveys, such description is required.

(v) If the selected lands are unsurveyed and are not described by approved protraction diagrams, a description of the lands and a map or maps, in duplicate, sufficient to permit ready identification of the location, boundaries, and area of the lands.

(2) Selections must be accompanied by a filing fee of $10 for 5,760 acres or fraction thereof in the selection which fee is not returnable.

(3) All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved. A tract will not be considered compact if it excludes other public lands available for selection within its exterior boundary. Each tract selected shall contain at least 5,760 acres unless isolated from other tracts open to selection.

(4) If the selected lands are in the area north and west of the line described in section 10 of the act, all selection made or confirmed by the act must be accompanied by a statement of the President or his designated representative showing that he approves the selection.

(5) Section 2627.3(a)(1) and (c)(1)(ii) do not apply to the extent that an application embraces a reserved or retained interest.

(d) *Effect of approval of selections.* Following the selection of lands by the State and the tentative approval of such selection by the authorized officer of the Bureau of Land Management, the State is authorized to execute conditional leases and to make conditional sales of such selected lands pending survey of the exterior boundaries of the selected area, if necessary, and issuance of patent. Said officer will notify the appropriate State official in writing of his tentative approval of a selection after determining that there is no bar to passing legal title to the lands to the State other than the need for the survey of the lands or for the issuance of patent or both.

§ 2627.4 All grants.

(a) *State preference right of selection: waivers.* (1) The act of July 7, 1958 (see § 2627.3(a)), provide that upon the revocation of any order of withdrawal in Alaska, the order of revocation shall provide for a period of not less than 90 days before the date on which it otherwise becomes effective during which period the State of Alaska shall have a preferred right of selection under the acts of 1956 and 1958, except as against prior existing valid rights, equitable claims subject to allowance and confirmation and other preferred rights of application conferred by law.

(2) Where the proper selecting agent of the State files in writing in the proper office a waiver of the preference provisions of paragraph (a) of this section in connection with the proposed revocation of an order of withdrawal, the order affecting such revocation will not provide for such preference.

(b) *Segregative effect of applications.* Lands desired by the State under the regulations of this part will be segregated from all appropriations based upon application or settlement and location, including locations under the mining laws, when the state files its application for selection in the proper office properly describing the lands as provided in § 2627.3(c)(1) (iii), (iv), and (v). Such segregation will automatically terminate unless the State publishes first notice as provided by paragraph (c) of this section within 60 days of service of such notice by the appropriate officer of the Bureau of Land Management.

(c) *Publications and protests.* (1) The State will be required to publish once a week for five consecutive weeks in accordance with § 1824.4 of this chapter, at its own expense, in a designated newspaper, and in a designated form, a notice allowing all persons claiming the land adversely to file in the appropriate office their objections to the issuance of patent or certification for lands selected under the regulations of this part. A protestant must serve on the State a copy of the objections and furnish evidence of service to the proper office.

(2) The State must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

PART 2630—RAILROAD GRANTS

Subpart 2631—Patents for Lands Sold by Railroad Carriers (Transportation Act of 1940)

Sec.
2631.0-3 Authority.
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2631.1 Applications.
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2631.3 Surveying and conveyance fees.
2631.4 Patents.

Subpart 2631—Patents for Lands Sold by Railroad Carriers (Transportation Act of 1940)

AUTHORITY: R.S. 2478; 43 U.S.C. 1201.

SOURCE: 35 FR 9613, June 13, 1970, unless otherwise noted.

§ 2631.0-3 Authority.

Subsection (b) of section 321, Part II, Title III, of the Transportation Act of September 18, 1940 (54 Stat. 934; 49 U.S.C. 65), authorizes the issuance of patents for the benefit of certain innocent purchasers for value of land-grant lands from railroad carriers which have released their land-grant claims.

NOTE: Notices of releases of land grant claims by railroad carriers listing the carriers, the date of the approval of the release and the land-grant predecessors involved dated Dec. 17, 1940, May 17, 1941, and June 29, 1942, appear at 6 FR 449, 2634, and 7 FR 5319.

§ 2631.0-8 Lands for which applications may be made.

Subsection (b) of section 321, Part II, Title III, of the Transportation Act of 1940 provides that in the case of a railroad carrier, or a predecessor, which received a land grant to aid in the construction of any part of its railroad, the laws relating to compensation for certain Government transportation services shall continue to apply as though subsection (a) of section 321 had not been enacted unless the carrier shall file on or before September 18, 1941, with the Secretary of the Interior, in the form and manner prescribed by him, a release of any claim it may have to lands, interests in lands, compensation, or reimbursement on account of lands or interests in lands so granted, claimed to have been granted or claimed should have been granted. Section 321 provides further that nothing therein shall be construed as preventing the issuance of patents confirming the title to such uncertified or unpatented lands as the Secretary of the Interior shall find have been sold prior to September 18, 1940, to innocent purchasers for value. Subsection (b) of section 321 authorizing the issuance of such patents is not an enlargement of the grants, and does not extend them to lands not already covered thereby and, therefore, has no application to lands which for various reasons, such as mineral character, prior grants, withdrawals, reservations, or appropriation, were not subject to the grants. It does apply, however, to lands selected under remedial or lieu acts supplemental to the original grants as well as to primary and indemnity lands. Classification under section 7 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269), as amended by the act of June 26, 1936 (49 Stat. 1976; 43 U.S.C. 315f), will not be required where the sold land is such as the company was authorized by law to select.

§ 2631.1 Applications.

Application, and supporting evidence, must be filed by the carrier in the proper office, accompanied by a nonrefundable application service charge of $10. The lands listed in any one application must be limited to those embraced in a single sale upon which the claim for patent is based. The application should state that it is filed under the railroad land grant act involved, properly cited, and subsection (b) of section 321, Part II, Title III of the Transportation Act of 1940 (54 Stat. 954). The application must be supported by a showing that the land is of the character which would pass under the grant involved, and was not by some superior or prior claim, withdrawal, reservation, or other reason, excluded from the operation of the grant. Full details of the alleged sale must be furnished, such as dates, the terms thereof, the estate involved, consideration, parties, amounts and dates of payments, made, and amounts due, if any, description of the land, and transfers of title. The use, occupancy, and cultivation of the land and the improvements placed thereon by the alleged purchaser should be described. All statements should be duly corroborated. Available documentary evidence, including the contract or deed, should be filed, which may be authenticated copies of the originals. An abstract of title may be necessary, dependent upon the circumstances of the particular case. No application for a patent under this act will be favorably considered unless it be shown that the alleged purchaser is entitled forthwith to the estate and interest transferred by such patent. Evidence of a recorded deed of conveyance from the carrier to the purchaser may be required. Where the company has on file an application in which the sold lands embraced, it need not file a new application, but may file a request for amendment of the pending application to come under the Transportation Act of 1940, together with the showing, supra, required as to the bona fide sale.

§ 2631.2 Publication of notice.

The authorizing officer shall direct the publication of notice of the application. The notice will be published at the carrier's expense in a newspaper of general circulation in the vicinity of the land. If a daily newspaper be designated, the notice should be published in the Wednesday issue for five consecutive weeks; if weekly, for five consecutive issues; and if semiweekly, in either issue for five consecutive weeks. The carrier must furnish evidence of such publication in due course. Notice need not be published, in case of amendment of a pending application, where publication has already been had.

§ 2631.3 Surveying and conveyance fees.

The carrier must pay the cost of the survey of the land, paying also one-half the cost of any segregation survey in accordance with the laws and regulations pertaining to the survey and patenting of railroad lands. (See 43 U.S.C. 881 et seq.; also Subpart 1822 of this chapter.)

§ 2631.4 Patents.

If all be found regular and in conformity with the governing law and regulations, patent shall be issued in the name of the grantee under the railroad grant, the carrier paying the costs of preparation and issuance of the patent.

PART 2640—FAA AIRPORT GRANTS

Subpart 2640—Federal Airport Act of May 13, 1946

Sec.
2640.0-3 Authority.
2640.0-5 Definitions.
2640.0-7 Cross reference.

Subpart 2641—Procedures

Sec.
2641.1 Request by Administrator for transfer of property interest.
2641.2 Action on the request.
2641.3 Publication and posting.
2641.4 Approval of transfer.

Subpart 2640—Federal Airport Act of May 13, 1946

SOURCE: 35 FR 9613, June 13, 1970, unless otherwise noted.

§ 2640.0-3 Authority.

(a) Section 16 of the Federal Airport Act of May 13, 1946 (60 Stat. 179; 49 U.S.C. 1115) provides that whenever the Administrator of the Federal Aviation Agency determines that the use of any lands owned or controlled by the United States is reasonably necessary for carrying out a project under the act, or for the operation of any public airport, he shall file with the head of the Department or agency having control of such lands a request that such property interest therein as he may deem necessary be conveyed to the public agency sponsoring the project in question or owning or controlling the airport.

(b) Upon receipt of the request from the Administrator of the Federal Aviation Agency, the head of the Department or agency having control of the lands in question is directed to determine whether the requested conveyance is inconsistent with the needs of the Department or agency and to notify the Administrator of his determination within a period of four months after receipt of the Administrator's request. Upon the determination of the head of the Department or agency that it is not so inconsistent, he is authorized and directed, with the approval of the President and the Attorney General of the United States, and without any expense to the United States, to perform any acts and to execute any instruments necessary to make the conveyance requested.

§ 2640.0-5 Definitions.

As used in the regulations in this section, unless the context requires otherwise, the following terms shall have the meaning indicated:

(a) "The act" means the Federal Airport Act of May 13, 1946 (60 Stat. 179; 49 U.S.C. 1101).

(b) "Secretary" means the Secretary of the Interior or his duly authorized representative.

(c) "Director" means the Director of the Bureau of Land Management or his duly authorized representative.

(d) "Administrator" means the Administrator of the Federal Aviation Agency or his duly authorized representative.

(e) "Applicant" means any public agency as defined in 14 CFR 153.3, which, either individually or jointly with one or more other such public agencies, submits to the Administrator, an application requesting that public lands or interests therein, be transferred to such applicant under the Federal Airport Act.

(f) "Property interest" means the title to or any other interest in land or any easement through or other interest in air space.

(g) "Instrument of transfer" includes a patent, deed, lease or other instrument transferring a property interest.

§ 2640.0–7 Cross reference.

The regulations of the Federal Aviation Agency under this act are found in 14 CFR Part 153.

Subpart 2641—Procedures

SOURCE: 35 FR 9614, June 13, 1970, unless otherwise noted.

§ 2641.1 Request by Administrator for transfer of property interest.

Each request by the Administrator in behalf of the applicant for the transfer of a property interest in public lands or other federally owned lands under the jurisdiction of the Department of the Interior should be addressed to the Bureau of Land Management, should be in duplicate, and should contain the following:

(a) A copy of the application filed by the requesting public agency with the Administrator.

(b) A description of the land, if surveyed, by legal subdivisions, specifying section, township, and range. Unsurveyed land should be described by metes and bounds with a tie to a corner of the public-land surveys if within two miles; otherwise a tie should be made to some prominent topographic feature and the approximate latitude and longitude should be given when practicable.

§ 2641.2 Action on the request.

(a) The Secretary will determine whether the requested transfer is inconsistent with the needs of the Department or any agency thereof, and if it is not, the covenants, terms and conditions, if any, under which such transfer should be made. Any such conveyance will be made subject to valid existing rights of record, and to those disclosed as a result of posting, publication, or otherwise.

(b) Ordinarily where the lands involved are situated within a national park or monument or within an Indian reservation the transfer will not be authorized.

§ 2641.3 Publication and posting.

Before a transfer of fee title to public lands is made, the Bureau of Land Management will require the applicant to publish, at its own expense in a newspaper of general circulation in the county in which the land is situated, a notice stating that a request has been made by the Administrator on behalf of the applicant (giving its name and address) to acquire title to public lands (describing them) under the act, for the purpose of carrying out a project under the act, or for the operation of a public airport, as the case may be, and that the purpose of the notice is to give persons claiming an interest in the land or having bona fide objections to the proposed transfer an opportunity to file within 30 days after the date of the first publication, a protest, together with evidence that the protest has been served on the applicant. If the notice is published in a daily paper, the notice should be published for four consecutive weeks in the Wednesday issue, if a weekly, in four consecutive issues, and if a semiweekly or triweekly, in any of the issues on the same day each week for 4 consecutive weeks. The notice will also be posted during the entire period of publication in the proper office (see § 1821.2-1 of this chapter). No transfer will be made until proof of publication and posting of the notice has been filed.

§ 2641.4 Approval of transfer.

(a) *Special provisions in the instrument of transfer.* Each instrument of transfer made hereunder of fee title or a lesser estate in the lands shall contain: The covenants, terms and conditions requested by the Administrator, as well as those required for the protection of the Department of the Interior or any agency thereof.

(R.S. 2478, sec. 1, 45 Stat. 728, as amended, 43 U.S.C. 1201, 49 U.S.C. 211)

PART 2650—ALASKA NATIVE SELECTIONS

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AUTHORITY: Sec. 25 of the Alaska Native Claims Settlement Act of December 18, 1971; Administrative Procedure Act (5 U.S.C. 551 et seq.), unless otherwise noted.

SOURCE: 38 FR 14218, May 30, 1973, unless otherwise noted.

Subpart 2650—Alaska Native Selections—Generally

§ 2650.0-1 Purpose.

The purpose of the regulations in this part is to provide procedures for orderly and timely implementation of those provisions of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601) which pertain to selections of lands and interests in lands in satisfaction of the land selections conferred by said act upon Alaska Natives and Alaska Native corporations.

§ 2650.0-2 Objectives.

The program of the Secretary is to implement such provisions in keeping with the congressional declaration of policy that the settlement of the Natives' aboriginal land claims be fair and just and that it be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation and with maximum participation by Natives in decisions affecting their rights and property.

§ 2650.0-3 Authority.

Section 25 of the Alaska Native Claims Settlement Act of December 18, 1971, authorizes the Secretary of the Interior to issue and publish in the FEDERAL REGISTER, pursuant to the Administrative Procedure Act (5 U.S.C. 551, et seq.), such regulations as may be necessary to carry out the purposes of the act.

§ 2650.0-5 Definitions.

(a) "Act" means the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601) and any amendments thereto.

(b) "Secretary" means the Secretary of the Interior or his authorized delegate.

(c) "Native" means a Native as defined in section 3(b) of the act.

(d) "Native village" means any tribe, band, clan, group, village, community, or association in Alaska, as defined in section 3(c) of the act.

(e) "Village corporation" means a profit or nonprofit Alaska Native village corporation which is eligible under § 2651.2 of this chapter to select land and receive benefits under the act, and is organized under the laws of the State of Alaska in accordance with the provisions of section 8 of the act.

(f) "Regional corporation" means an Alaska Native regional corporation organized under the laws of the State of Alaska in accordance with the provisions of section 7 of the act.

(g) "Public lands" means all Federal lands and interests in lands located in Alaska (including the beds of all nonnavigable bodies of water), except:

(1) The smallest practicable tract, as determined by the Secretary, enclosing land actually used, but not necessarily having improvements thereon, in connection with the administration of a Federal installation; and,

(2) Land selections of the State of Alaska which have been patented or tentatively approved under section 6(g) of the Alaska Statehood Act, as amended (72 Stat. 341; 77 Stat. 223; 48 U.S.C. ch. 2), or identified for selection by the State prior to January 17, 1969, except as provided in § 2651.4(a)(1) of this chapter.

(h) "Interim conveyance" as used in these regulations means the conveyance granting to the recipient legal title to unsurveyed lands, and containing all the reservations for easements, rights-of-way, or other interests in land, provided by the act or imposed on the land by applicable law, subject only to confirmation of the boundary descriptions after approval of the survey of the conveyed land.

(i) "Patent" as used in these regulations means the original conveyance granting legal title to the recipient to surveyed lands, and containing all the reservations for easements, rights-of-way, or other interests in land, provided by the act or imposed on the land by applicable law; or the document issued after approval of the survey by the Bureau of Land Management, to confirm the boundary description of the unsurveyed conveyed lands.

(j) "Conveyance" as used in these regulations means the transfer of title pursuant to the provisions of the act whether by interim conveyance or patent, whichever occurs first.

(k) "National Wildlife Refuge System" means all lands, waters, and interests therein administered on December 18, 1971, by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas, as provided in the act of October 15, 1966, 80 Stat. 927, as amended by the act of July 18, 1968, 82 Stat. 359 (16 U.S.C. 668dd).

(l) "Protraction diagram" means the approved diagram of the Bureau of Land Management mathematical plan for extending the public land surveys and does not constitute an official Bureau of Land Management survey, and, in the absence of an approved diagram of the Bureau of Land Management, includes the State of Alaska protraction diagrams which have been authenticated by the Bureau of Land Management.

(m) "Date of filing" shall be the date of postmark, except when there is no postmark, in which case it shall be the date of receipt in the proper office.

(n) "LUPC" means the Joint Federal-State Land Use Planning Commission for Alaska.

(o) "Major waterway" means any river, stream, or lake which has significant use in its liquid state by watercraft for access to publicly owned lands or between communities. Significant use means more than casual, sporadic or incidental use by watercraft, including floatplanes, but does not include use of the waterbody in its frozen state by snowmobiles, dogsleds or skiplanes. Designation of a river or stream as a major waterway may be limited to a specific segment of the particular waterbody.

(p) "Present existing use" means use by either the general public which includes both Natives and non-Natives alike or by a Federal, State, or municipal corporation entity on or before December 18, 1976, or the date of selection, whichever is later. Past use which has long been abandoned shall not be considered present existing use.

(q) "Public easement" means any easement reserved by authority of section 17(b) of the act and under the criteria set forth in these regulations. It includes easements for use by the general public and easements for use by a specific governmental agency. Public easements may be reserved for transportation, communication and utility purposes, for air, light or visibility purposes, or for guaranteeing international treaty obligations.

(r) "Publicly owned lands" means all Federal, State, or municipal corporation (including borough) lands or interests therein in Alaska, including public lands as defined herein, and submerged lands as defined by the Submerged Lands Act, 43 U.S.C. 1301, et seq.

(s) "Director" means the Director, Bureau of Land Managment

(t) "Isolated tract" means a tract of one or more contiguous parcels of publicly owned lands completely surrounded by lands held in nonpublic ownership or so effectively separated from other publicly owned lands as to make its use impracticable without a public easement for access.

(u) "State" means the State of Alaska.

[38 FR 14218, May 30, 1973, as amended at 43 FR 55328, Nov. 27, 1978]

§ 2650.0-7 References.

(a) Native enrollment procedures are contained in 25 CFR Part 43h.

(b) Withdrawal procedures are contained in Part 2300 of this chapter.

(c) Application procedures are contained in Subpart 1821 of this chapter.

(d) Appeals procedures are contained in 43 CFR Part 4, Subpart J.

(e) Mineral patent application procedures are contained in Part 3860 of this chapter.

(43 U.S.C. 1601-1624)

[38 FR 14218, May 30, 1973, as amended at 40 FR 33174, Aug. 6, 1975]

§ 2650.0-8 Waiver.

The Secretary may, in his discretion, waive any nonstatutory requirement of these regulations. When the rights of third parties will not be impaired, and when rapid, certain settlement of the claims of Natives will be assisted, minor procedural and technical errors should be waived.

§ 2650.1 Provisions for interim administration.

(a) (1) Prior to any conveyance under the act, all public lands withdrawn pursuant to sections 11, 14, and 16, or covered by section 19 of the act, shall be administered under applicable laws and regulations by the Secretary of the Interior, or by the Secretary of Agriculture in the case of national forest lands, as provided by section 22(i) of the act. The authority of the Secretary of the Interior and of the Secretary of Agriculture to make contracts and to issue leases, permits, rights-of-way, or easements is not impaired by the withdrawals.

(2) (i) Prior to the Secretary's making contracts or issuing leases, permits, rights-of-way, or easements, the views of the concerned regions or villages shall be obtained and considered, except as provided in paragraph (a)(2)(ii) of this section.

(ii) Prior to making contracts, or issuing leases, permits, rights-of-way, or easements on lands subject to election pursuant to section 19(b) of the act, the Secretary shall obtain the consent of the representatives of the Natives living on those lands.

(b) As provided in section 17(d)(3) of the act, any lands withdrawn pursuant to section 17(d) shall be subject to administration by the Secretary under applicable laws and regulations and his authority to make contracts, and to issue leases, permits, rights-of-way, or easements shall not be impaired by the withdrawal. To the extent that any such land is also subject to the provisions of paragraph (a) of this section, the provisions of that subsection shall govern.

(c) As provided in section 21(e) of the act, so long as there are no substantial revenues from real property interests conveyed pursuant to this act and the lands are not subject to State and local real property taxes, such lands shall continue to receive forest fire protection services from the United States at no cost. The Secretary will promulgate criteria, after consultation with the concerned Native corporations and the State of Alaska, for determining when substantial revenues are accruing as to lands for which forest fire protection services are furnished by the Department of the Interior and no discontinuance of such service will be ordered by the Secretary unless he finds, after notice and opportunity for submission of views, that such discontinuance is in conformity with the criteria.

§ 2650.2 Application procedures for land selections.

(a) Applications for land selections must be filed on forms approved by the Director, Bureau of Land Management. Applications must be filed in accordance with Subpart 1821 of this chapter.

(b) Each regional corporation shall submit with its initial application under this section a copy of the resolution authorizing the individual filing the application to do so.

(c) Each village corporation under subpart 2651 of this chapter must submit with its initial application under this section a certificate of incorporation, evidence of approval of its articles of incorporation by the regional corporation for that region, and a copy of the authorization of the individual filing the application to do so.

(d) (1) Regional and village corporations authorized by the act subsequently filing additional or amendatory applications need only refer to the serial number of the initial filing.

(2) Any change of the officer authorized to act for any corporation in the matter of land selections should be promptly submitted to the appropriate office of the Bureau of Land Management.

(e) (1) If the lands applied for are surveyed, the legal description of the lands in accordance with the official plats of survey shall be used.

(2) If the lands applied for are unsurveyed, they shall be described by protraction diagrams.

(3) If the lands applied for are not surveyed and are not covered by protraction diagrams, they must be described by metes and bounds commencing at a readily identifiable topographic feature, such as a mountain peak, mouth of a stream, etc., or a monumented point of known position, such as a triangulation station, and the description must be accompanied

by a topographic map delineating the boundary of the area applied for.

(4) Where 1:63,360 U.S.G.S. quadrangle maps with the protraction diagram plotted thereon have been published, these maps shall be used to portray and describe the lands applied for. Where 1:63,360 U.S.G.S. quadrangle maps with the protraction diagram plotted thereon have not been published, then the 1:250,000 U.S.G.S. quadrangle maps with the protraction diagrams plotted thereon shall be used.

(5) If the written description shown on the application and the map portrayal accompanying the application do not agree the delineation shown on the map shall be controlling.

(f) The selected areas may be adjusted by the Secretary with the consent of the applicant and amendment of the application by the applicant, provided that the adjustment will not create an excess over the selection entitlement.

§ 2650.3 Lawful entries, lawful settlements, and mining claims.

§ 2650.3-1 Lawful entries and lawful settlements.

(a) Pursuant to sections 14(g) and 22(b) of the act, all conveyances issued under the act shall exclude any lawful entries or entries which have been perfected under, or are being maintained in compliance with, laws leading to the acquisition of title, but shall include land subject to valid existing rights of a temporary or limited nature such as those created by leases (including leases issued under section 6(g) of the Alaska Statehood Act), contracts, permits, rights-of-way, or easements.

(b) The right of use and occupancy of persons who initiated lawful settlement or entry of land, prior to August 31, 1971, is protected: *Provided,* That:

(1) Occupancy has been or is being maintained in accordance with the appropriate public land law, and

(2) Settlement or entry was not in violation of Public Land Order No. 4582, as amended. Any person who entered or settled upon land in violation of that public land order has gained no rights.

(c) In the event land excluded from conveyance under paragraph (a) of this section reverts to the United States, the grantee or his successor in interest shall be afforded an opportunity to acquire such land by exchange pursuant to section 22(f) of the act.

§ 2650.3-2 Mining claims.

(a) *Possessory rights.* Pursuant to section 22(c) of the act, on any lands to be conveyed to village or regional corporations, any person who prior to August 31, 1971, initiated a valid mining claim or location, including millsites, under the general mining laws and recorded notice thereof with the appropriate State or local office, shall not be challenged by the United States as to his possessory rights, if all requirements of the general mining laws are met. However, the validity of any unpatented mining claim may be contested by the United States, the grantee of the United States or its successor in interest, or by any person who may initiate a private contest. Contest proceedings and appeals therefrom shall be to the Interior Board of Land Appeals.

(b) *Patent requirements met.* An acceptable mineral patent application must be filed with the appropriate Bureau of Land Management office not later than December 18, 1976, on lands conveyed to village or regional corporations.

(1) Upon a showing that a mineral survey cannot be completed by December 18, 1976, the filing of an application for a mineral survey, which states on its face that it was filed for the purpose of proceeding to patent, will constitute an acceptable mineral patent application, provided all applicable requirements under the general mining laws have been met.

(2) The failure of an applicant to prosecute diligently his application for mineral patent to completion will result in the loss of benefits afforded by section 22(c) of the act.

(3) The appropriate office of the Bureau of Land Management shall give notice of the filing of an application under this section to the village or regional corporation which has se-

lection rights in the land covered by the application.

(c) *Patent requirements not met.* Any mineral patent application filed after December 18, 1976, on land conveyed to any village or regional corporation pursuant to this act, will be rejected for lack of departmental jurisdiction. After that date, patent applications may continue to be filed on land not conveyed to village or regional corporations until such land is conveyed.

(43 U.S.C. 1601-1624)

[38 FR 14218, May 30, 1973, as amended at 40 FR 33174, Aug. 6, 1975]

§ 2650.4 Conveyance reservations.

§ 2650.4-1 Existing rights and contracts.

Any conveyance issued for surface and subsurface rights under this act will be subject to any lease, contract, permit, right-of-way, or easement and the rights of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted him.

§ 2650.4-2 Succession of interest.

Upon issuance of any conveyance under this authority, the grantee thereunder shall succeed and become entitled to any and all interests of the State of Alaska or of the United States as lessor, contractor, permitter, or grantor, in any such lease, contract, permit, right-of-way, or easement covering the estate conveyed, subject to the provisions of section 14(g) of the act.

§ 2650.4-3 Administration.

Leases, contracts, permits, rights-of-way, or easements granted prior to the issuance of any conveyance under this authority shall continue to be administered by the State of Alaska or by the United States after the conveyance has been issued, unless the responsible agency waives administration. Where the responsible agency is an agency of the Department of the Interior, administration shall be waived when the conveyance covers all the land embraced within a lease, contract, permit, right-of-way, or easement, unless there is a finding by the Secretary that the interest of the United States requires continuation of the administration by the United States. In the latter event, the Secretary shall not renegotiate or modify any lease, contract, right-of-way or easement, or waive any right or benefit belonging to the grantee until he has notified the grantee and allowed him an opportunity to present his views.

§ 2650.4-4 Revenues. [Reserved]

§ 2650.4-5 National forest lands.

Every conveyance which includes lands within the boundaries of a national forest shall, as to such lands, contain reservations that:

(a) Until December 18, 1976, the sale of any timber from the land is subject to the same restrictions relating to the export of timber from the United States as are applicable to national forest lands in Alaska under rules and regulations of the Secretary of Agriculture; and,

(b) Until December 18, 1983, the land shall be managed under the principles of sustained yield and under management practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands.

§ 2650.4-6 National wildlife refuge system lands.

(a) Every conveyance which includes lands within the national wildlife refuge system shall, as to such lands, provide that the United States has the right of first refusal so long as such lands remain within the system. The right of first refusal shall be for a period of 120 days from the date of notice to the United States that the owner of the land has received a bona fide offer of purchase. The United States shall exercise such right of first refusal by written notice to the village corporation within such 120-day period. The United States shall not be deemed to have exercised its right of first refusal if the village corporation does not consummate the sale in accordance with the notice to the United States.

(b) Every conveyance which covers lands lying within the boundaries of a national wildlife refuge in existence on

December 18, 1971, shall provide that the lands shall remain subject to the laws and regulations governing use and development of such refuge so long as such lands remain in the refuge. Regulations governing use and development of refuge lands conveyed pursuant to section 14 shall permit such uses that will not materially impair the values for which the refuge was established.

§ 2650.4-7 Public easements.

(a) *General requirements.* (1) Only public easements which are reasonably necessary to guarantee access to publicly owned lands or major waterways and the other public uses which are contained in these regulations, or to guarantee international treaty obligations shall be reserved.

(2) In identifying appropriate public easements assessment shall be made in writing of the use and purpose to be accommodated.

(3) The primary standard for determining which public easements are reasonably necessary for access shall be present existing use. However, a public easement may be reserved absent a demonstration of present existing use only if it is necessary to guarantee international treaty obligations, if there is no reasonable alternative route or site available, or if the public easement is for access to an isolated tract or area of publicly owned land. When adverse impacts on Native culture, lifestyle, and subsistence needs are likely to occur because of the reservation of a public easement, alternative routes shall be assessed and reserved where reasonably available. The natural environment and other relevant factors shall also be considered.

(4) All public easements which are reserved shall be specific as to use, location, and size. Standard sizes and uses which are delineated in this subsection may be varied only when justified by special circumstances.

(5) Transportation, communication, and utility easements shall be combined where the combination of such easements is reasonable considering the primary purposes for which easement is to be reserved.

(6) Public easements may be reserved to provide access to present existing Federal, State, or municipal corporation sites; these sites themselves shall not be reserved as public easements. Unless otherwise justified, access to these sites shall be limited to government use.

(7) Scenic easements or easements for recreation on lands conveyed pursuant to the Act shall not be reserved. Nor shall public easements be reserved to hunt or fish from or on lands conveyed pursuant to the Act.

(8) The identification of needed easements and major waterways shall include participation by appropriate Natives and Native corporations, LUPC, State, Federal agencies, and other members of the public.

(9) After reviewing the identified easements needs, the Director shall tentatively determine which easements shall be reserved. Tentative determinations of major waterways shall also be made by the Director and shall apply to rivers, streams, and lakes. All lakes over 640 acres in size shall be screened to determine if they qualify as major waterways. Those smaller than 640 acres may be considered on a case-by-case basis. The Director shall issue a notice of proposed easements which notifies all parties that participated in the development of the easement needs and information on major waterways as to the tentative easement reservations and which directs that all comments be sent to the LUPC and the Director.

(10) The State and the LUPC shall be afforded 90 days after notice by the Director to make recommendations with respect to the inclusion of public easements in any conveyance. If the Director does not receive a recommendation from the LUPC or the State within the time period herein called for, he may proceed with his determinations.

(11) Prior to making a determination of public easements to be reserved, the Director shall review the recommendations of the LUPC, appropriate Native corporation(s), other Federal agencies, the State, and the public. Consideration shall be given to recommendations for public easement reservations which are timely submitted to the

Bureau of Land Management and accompanied by written justification.

(12) The Director, after such review, shall prepare a decision to convey that includes all necessary easements and other appropriate terms and conditions relating to conveyance of the land. If the decision prepared by the Director is contrary to the LUPC's recommendations, he shall notify the LUPC of the variance(s) and shall afford the LUPC 10 days in which to document the reasons for its disagreement before making his final decision. The Director shall then issue a Decision to Issue Conveyance (DIC).

(13) The Director shall terminate a public easement if it is not used for the purpose for which it was reserved by the date specified in the conveyance, if any, or by December 18, 2001, whichever occurs first. He may terminate an easement at any time if he finds that conditions are such that its retention is no longer needed for public use or governmental function. However, the Director shall not terminate an access easement to isolated tracts of publicly owned land solely because of the absence of proof of public use. Public easements which have been reserved to guarantee international treaty obligations shall not be terminated unless the Secretary determines that the reasons for such easements no longer justify the reservation. No public easement shall be terminated without proper notice and an opportunity for submission of written comments or for a hearing if a hearing is deemed to be necessary by either the Director or the Secretary.

(b) *Transportation easements.* (1) Public easements for transportation purposes which are reasonably necessary to guarantee the public's ability to reach publicly owned lands or major waterways may be reserved across lands conveyed to Native corporations. Such purposes may also include transportation to and from communities, airports, docks, marine coastline, groups of private holdings sufficient in number to constitute a public use, and government reservations or installations. Public easements may also be reserved for railroads. If public easements are to be reserved, they shall:

(i) Be reserved across Native lands only if there is no reasonable alternative route of transportation across publicly owned lands;

(ii) Within the standard of reasonable necessity, be limited in number and not duplicative of one another (nonduplication does not preclude separate easements for winter and summer trails, if otherwise justified);

(iii) Be subject only to specific uses and sizes which shall be placed in the appropriate interim conveyance and patent documents;

(iv) Follow existing routes of travel unless a variance is otherwise justified;

(v) Be reserved for future roads, including railroads and roads for future logging operations, only if they are site specific and actually planned for construction within 5 years of the date of conveyance;

(vi) Be reserved in topographically suitable locations whenever the location is not otherwise determined by an existing route of travel or when there is no existing site;

(vii) Be reserved along the marine coastline only to preserve a primary route of travel between coastal communities, publicly owned uplands, or coastal communities and publicly owned uplands;

(viii) Be reserved from publicly owned uplands to the marine coastline only if significant present existing use has occurred on those publicly owned lands below the line of mean high tide. However, for isolated tracts of publicly owned uplands, public easements may be reserved to provide transportation from the marine coastline if there is no other reasonable transportation route;

(ix) Be reserved along major waterways only to provide short portages or transportation routes around obstructions. However, this condition does not preclude the reservation of a trail or road easement which happens to run alongside a waterway;

(x) Not be reserved on the beds of major waterways except where use of the bed is related to road or trail purposes, portaging, or changing the mode of travel between water and land (e.g., launching or landing a boat); a specific portion of the bed or shore of the waterway which is necessary to provide portage or transportation routes around obstructions, including those that are dangerous or impassible or seasonably dangerous or impassible, may be reserved.

(xi) Not be reserved on the beds of nonmajor waterways except where use of the beds is related to road or trail purposes. However, this exception shall not be used to reserve a continuous linear easement on the streambed to facilitate access by boat.

(xii) Not be reserved simply to reflect patterns of Native use on Native lands;

(xiii) Not be reserved for the purpose of protecting Native stockholders from their respective corporations;

(xiv) Not be reserved on the basis of subsistence use of the lands of one village by residents of another village.

(2) Transportation easements shall be limited to roads and sites which are related to access. The use of these easements shall be controlled by applicable Federal, State, or municipal corporation laws or regulations. The uses stated herein will be specified in the interim conveyance and patent documents as permitted uses of the easement.

(i) The width of a trail easement shall be no more than 25 feet if the uses to be accommodated are for travel by foot, dogsleds, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles (less than 3,000 lbs. G.V.W.);

(ii) The width of a trail easement shall be no more than 50 feet if the uses to be accommodated are for travel by large all-terrain vehicles (more than 3,000 lbs. G.V.W.), track vehicles and 4-wheel drive vehicles, in addition to the uses included under paragraph (b)(2)(i) of this section;

(iii) The width of an existing road easement shall be no more than 60 feet if the uses to be accommodated are for travel by automobiles or trucks in addition to the uses included under paragraphs (b)(2) (i) and (ii) of this section. However, if an existing road is wider than 60 feet, the specific public easement may encompass that wider width. For proposed roads, including U.S. Forest Service logging roads, the width of the public easement shall be 100 feet, unless otherwise justified. Prior to construction, trail uses which are included under paragraphs (b)(2) (i) and (ii) of this section may be permitted if otherwise justified and may continue if the road is not built. If after the road has been constructed a lesser width is sufficient to accommodate the road, the Director shall reduce the size of the easement to that width.

(iv) The width of a proposed railroad easement shall be 100 feet on either side of the center line of any such railroad.

(3) *Site Easements.* Site easements which are related to transportation may be reserved for aircraft landing or vehicle parking (e.g., aircraft, boats, ATV's, cars, trucks), temporary camping, loading or unloading at a trail head, along an access route or waterway, or within a reasonable distance of a transportation route or waterway where there is a demonstrated need to provide for transportation to publicly owned lands or major waterways. Temporary camping, loading, or unloading shall be limited to 24 hours. Site easements shall not be reserved for recreational use such as fishing, unlimited camping, or other purposes not associated with use of the public easement for transportation. Site easements shall not be reserved for future logging or similar operations (e.g., log dumps, campsites, storage or staging areas). Before site easements are reserved on transportation routes or on major waterways, a reasonable effort shall be made to locate parking, camping, beaching, or aircraft landing sites on publicly owned lands; particularly, publicly owned lands in or around communities, or bordering the waterways. If a site easement is to be reserved, it shall:

(i) Be subject to the provisions of paragraphs (b)(1) (ii), (iii), (vi), (xii), (xiii), and (xiv) of this section.

(ii) Be no larger than one acre in size and located on existing sites unless a variance is in either instance, otherwise justified;

(iii) Be reserved on the marine coastline only at periodic points along the coast where they are determined to be reasonably necessary to facilitate transportation on coastal waters or transportation between coastal waters and publicly owned uplands;

(iv) Be reserved only at periodic points on major waterways. Uses shall be limited to those activities which are related to travel on the waterway or to travel between the waterway and publicly owned lands. Also, periodic site easements shall be those necessary to allow a reasonable pattern of travel on the waterway;

(v) Be reserved for aircraft landing strips only if they have present significant use and are a necessary part of a transportation system for access to publicly owned lands and are not suitable for reservation under section 14(c)(4) of the act. Any such easement shall encompass only that area which is used for takeoffs and landings and any clear space around such site that is needed for parking or public safety.

(c) *Miscellaneous easements.* The public easements referred to in this subsection which do not fall into the categories above may be reserved in order to continue certain uses of publicly owned lands and major waterways. These public easements shall be limited in number. The identification and size of these public easements may vary from place to place depending upon particular circumstances. When not controlled by applicable law or regulation, size shall not exceed that which is reasonably necessary for the purposes of the identified easement. Miscellaneous easements may be reserved for the following purposes:

(1) Public easements which are for utility purposes (e.g., water, electricity, communications, oil, gas, and sewage) may be reserved and shall be based upon present existing use. Future easements for these purposes may also be reserved, but only if they are site specific and actually planned for construction within 5 years of the date of conveyance;

(2) Easements for air light or visibility purposes may be reserved if required to insure public safety or to permit proper use of improvements developed for public benefit or use; e.g., protection for aviation or navigation aids or communications sites;

(3) Public easements may be reserved to guarantee international treaty obligations or to implement any agreement entered into between the United States and the Native Corporation receiving the conveyance. For example, the agreement of May 14, 1974, related to Naval Petroleum Reserve Number Four (redesignated June 1, 1977, as the National Petroleum Reserve-Alaska) between the United States Department of the Navy and the Arctic Slope Regional Corporation and four Native village corporations, shall be incorporated in the appropriate conveyances and the easements necessary to implement the agreement shall be reserved.

(d) *Conveyance provisions.* (1) Public easement provisions shall be placed in interim conveyances and patents.

(2) Permissible uses of a specific easement shall be listed in the appropriate conveyance document. The conveyance documents shall include a general provision which states that uses which are not specifically listed are prohibited.

(3) The easements shall be identified on appropriate maps which shall be part of the pertinent interim conveyance and patent.

(4) All public easement shall be reserved to the United States and subject, as appropriate, to further Federal, State, or municipal corporation regulation.

(5) All conveyance documents shall contain a general provision which states that pursuant to section 17(b)(2) of the Act, any valid existing right recognized by the Act shall continue to have whatever right of access as is now provided for under existing law.

[43 FR 55329, Nov. 27, 1978]

§ 2650.5 Survey requirements.

§ 2650.5-1 General.

(a) Selected areas are to be surveyed as provided in section 13 of the Act. Any survey or description used as a basis for conveyance must be adequate to identify the lands to be conveyed.

(b) Surveys shall take into account the navigability or nonnavigability of bodies of water. The beds of all bodies of water determined by the Secretary to be navigable shall be excluded from the gross area of the surveys and shall not be charged to total acreage entitlements under the act. Prior to making his determination as to the navigability of a body of water, the Secretary shall afford the affected regional corporation the opportunity to review the data submitted by the State of Alaska on the question of navigability and to submit its views on the question of navigability. Upon request of a regional corporation or the State of Alaska, the Secretary shall provide in writing the basis upon which his final determination of navigability is made. The beds of all bodies of water not determined to be navigable shall be included in the surveys as public lands, shall be included in the gross area of the surveys, and shall be charged to total acreage entitlements under the Act. The beds of all nonnavigable bodies of water comprising one half or more of a section shall be excluded from the gross area of the surveys and shall not be charged to total acreage entitlement under the act, unless the section containing the body of water is expressly selected or unless all the riparian land surrounding the body of water is selected. No ground survey or monumentation will be required to be done by the Bureau of Land Management of bodies of water.

§ 2650.5-2 Rule of approximation.

To assure full entitlement, the rule of approximation may be applied with respect to the acreage limitations applicable to conveyances and surveys under this authority, i.e., any excess must be less than the deficiency would be if the smallest legal subdivision were eliminated (see 62 I.D. 417, 421).

§ 2650.5-3 Regional surveys.

Lands to be conveyed to a regional corporation, when selected in contiguous units, shall be grouped together for the purpose of survey and surveyed as one tract, with monuments being established on the exterior boundary at angle points and at intervals of approximately 2 miles on straight lines. If requested by the grantee, the Secretary may survey, insofar as practicable, the individual selections that comprise the total tract.

§ 2650.5-4 Village surveys.

(a) Only the exterior boundaries of contiguous entitlements for each village corporation will be surveyed. Where land within the outer perimeter of a selection is not selected, the boundaries along the area excluded shall be deemed exterior boundaries. The survey will be made after the total acreage entitlement of the village has been selected.

(b) Surveys will be made within the village corporation selections to delineate those tracts required by law to be conveyed by the village corporations pursuant to section 14(c) of the Act.

(c) (1) The boundaries of the tracts described in paragraph (b) of this section shall be posted on the ground and shown on a map which has been approved in writing by the affected village corporation and submitted to the Bureau of Land Management. Conflicts arising among potential transferees identified in section 14(c) of the Act, or between the village corporation and such transferees, will be resolved prior to submission of the map. Occupied lots to be surveyed will be those which were occupied as of December 18, 1971.

(2) Lands shown by the records of the Bureau of Land Management as not having been conveyed to the village corporation will be excluded by adjustments on the map by the Bureau of Land Management. No surveys shall begin prior to final written approval of the map by the village corporation and the Bureau of Land Management. After such written approval, the map will constitute a plan of survey. Surveys will then be made in accordance with the plan of survey. No further changes will be made to accommodate additional section 14(c) transferees, and no additional survey work desired by the village corporation or municipality within the area covered by the plan of survey or immediately adjacent thereto will be performed by the Secretary.

§ 2650.5-5 Cemetery sites and historical places.

Only those cemetery sites and historical places to be conveyed under section 14(h)(1) of the Act shall be surveyed.

§ 2650.5-6 Adjustment to plat of survey.

All conveyances issued for lands not covered by officially approved surveys of the Bureau of Land Management shall note that upon the filing of an official plat of survey, the boundary of the selected area, described in terms of protraction diagrams or by metes and bounds, shall be redescribed in accordance with the plats of survey. However, no change will be made in the land selected.

§ 2650.6 Selection limitations.

(a) Notwithstanding any other provisions of the act, no village or regional corporation may select lands which are within 2 miles from the boundary of any home rule or first-class city (excluding boroughs) as the boundaries existed and the cities were classified on December 18, 1971, or which are within 6 miles from the boundary of Ketchikan, except that a village corporation organized by Natives of a community which is itself a first class or home-rule city is not prohibited from making selections within 2 miles from the boundary of that first class or home-rule city, unless such selections fall within 2 miles from the boundary of another first class or home-rule city which is not itself a Native village or within 6 miles from the boundary of Ketchikan.

(b) Determination as to which cities were classified as home rule or first class as of December 18, 1971, and their boundaries as of that date will be made in accordance with the laws of the State of Alaska.

(c) If any village corporation whose land withdrawals encompass Dutch Harbor is found eligible under this act, it may select lands pursuant to Subpart 2651 of this chapter and receive a conveyance under the terms of section 14(a) of the Act.

§ 2650.7 Publication.

In order to determine whether there are any adverse claimants to the land, the applicant should publish notice of his application. If the applicant decides to avail himself of the privilege of publishing a notice to all adverse claimants and requests it, the authorized officer will prepare a notice for publication. The publication will be in accordance with the following procedure:

(a) The applicant will have the notice published allowing all persons claiming the land adversely to file in the appropriate land office their objections to the issuance of any conveyance. The notice shall be published once a week for 4 consecutive weeks in a newspaper of general circulation.

(b) The applicant shall file a statement of the publisher, accompanied by a copy of the published notice, showing that publication has been had for 4 consecutive weeks. The applicant must pay the cost of publication.

(c) Any adverse claimant must serve on the applicant a copy of his objections and furnish evidence of service thereof to the appropriate land office.

(d) For all land selections made under the Act, in order to give actual notice of the decision of the Bureau of Land Management proposing to convey lands, the decision shall be served on all known parties of record who claim to have a property interest or other valid existing right in land affected by such decision, the appropriate regional corporation, and any Federal agency of record. In order to give constructive notice of the decision to any unknown parties, or to known parties who cannot be located after reasonable efforts have been expended to locate, who claim a property interest or other valid existing right in land affected by the decision, notice of the decision shall be published once in the FEDERAL REGISTER and, once a week, for four (4) consecutive weeks, in one or more newspapers of general circulation in the State of Alaska nearest the locality where the land affected by the decision is situated, if possible. Any decision or notice actually served on parties or constructively served on parties in accord with this subsection shall state that any party claiming a property interest in land affected by the decision may appeal the decision to the Alaska Native Claims Appeals Board. The decision or notice of decision shall also state that:

(1) Any party receiving actual notice of the decision shall have 30 days from

the receipt of actual notice to file an appeal; and,

(2) That any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign a receipt for actual notice, shall have 30 days from the date of publication in the FEDERAL REGISTER to file an appeal. Furthermore, the decision or notice of decision shall inform readers where further information on the manner of, and requirements for, filing appeal may be obtained, and shall also state that any party known or unknown who may claim a property interest which is adversely affected by the decision shall be deemed to have waived their rights which were adversely affected unless an appeal is filed with the Alaska Native Claims Appeal Board in accordance with the requirements stated in the decisions or notices provided for in this subsection and the regulations governing such appeals set out in 43 CFR Part 4, Subpart J.

[38 FR 14218, May 30, 1973, as amended at 41 FR 14737, Apr. 7, 1976; 41 FR 17909, Apr. 29, 1976]

§ 2650.8 Appeals.

Any decision relating to a land selection shall become final unless appealed to the Alaska Native Claims Appeal Board by a person entitled to appeal, under, and in accordance with, Subpart J of Part 4, 43 CFR.

(43 U.S.C. 1601-1624)

[40 FR 33175, Aug. 6, 1975]

Subpart 2651—Village Selections

§ 2651.0-3 Authority.

Sections 12 and 16(b) of the act provide for the selection of lands by eligible village corporations.

§ 2651.1 Entitlement.

(a) Village corporations eligible for land benefits under the act shall be entitled to a conveyance to the surface estate in accordance with sections 14(a) and 16(b) of the act.

(b) In addition to the land benefits in paragraph (a) of this section, each eligible village corporation shall be entitled to select and receive a conveyance to the surface estate for such acreage as is reallocated to the village corporation in accordance with section 12(b) of the act.

§ 2651.2 Eligibility requirements.

(a) Pursuant to sections 11(b) and 16(a) of the act, the Director, Juneau Area Office, Bureau of Indian Affairs, shall review and make a determination, not later than December 19, 1973, as to which villages are eligible for benefits under the act.

(1) *Review of listed native villages.* The Director, Juneau Area Office, Bureau of Indian Affairs, shall make a determination of the eligibility of villages listed in section 11(b)(1) and 16(a) of the act. He shall investigate and examine available records and evidence that may have a bearing on the character of the village and its eligibility pursuant to paragraph (b) of this section.

(2) *Findings of fact and notice of proposed decision.* After completion of the investigation and examination of records and evidence with respect to the eligibility of a village listed in sections 11(b)(1) and 16(a) of the Act for land benefits, the Director, Juneau Area Office, Bureau of Indian Affairs, shall publish in the FEDERAL REGISTER and in one or more newspapers of general circulation in Alaska his proposed decision with respect to such eligibility and shall mail a copy of the proposed decision to the affected village, all villages located in the region in which the affected village is located, all regional corporations within the State of Alaska and the State of Alaska. His proposed decision is subject to protest by any interested party within 30 days of the publication of the proposed decision in the FEDERAL REGISTER. If no valid protest is received within the 30-day period, such proposed decision shall become final and shall be published in the FEDERAL REGISTER. If the final decision is in favor of a listed village, the Director, Juneau Area Office, Bureau of Indian Affairs, shall issue a certificate as to the eligibility of the village in question for land benefits under the act, and certify the record and the decision to the Secretary. Copies of the final decisions and certi-

ficates of village eligibility shall be mailed to the affected village, all villages located in the region in which the affected village is located, all regional corporations within the State of Alaska, and the state of Alaska.

(3) *Protest.* Within 30 days from the date of publication of the proposed decision in the FEDERAL REGISTER, any interested party may protest a proposed decision as to the eligibility of a village. No protest shall be considered which is not accompanied by supporting evidence. The protest shall be mailed to the Director, Juneau Area Office, Bureau of Indian Affairs.

(4) *Action on protest.* Upon receipt of a protest, the Director, Juneau Area Office, Bureau of Indian Affairs, shall examine and evaluate the protest and supporting evidence required herein, together with his record of findings of fact and proposed decision, and shall render a decision on the eligibility of the Native village that is the subject of the protest. Such decision shall be rendered within 30 days from the receipt of the protest and supporting evidence by the Director, Juneau Area Office, Bureau of Indian Affairs. The decision of the Director, Juneau Area Office, Bureau of Indian Affairs, shall be published in the FEDERAL REGISTER and in one or more newspapers of general circulation in the State of Alaska and a copy of the decision and findings of fact upon which the decision is based shall be mailed to the affected village, all villages located in the region in which the affected village is located, all regional corporations within the State of Alaska, the State of Alaska, and any other party of record. Such decision shall become final unless appealed to the Secretary by a notice filed with the Alaska Native Claims Appeal Board within 30 days of its publication in the FEDERAL REGISTER.

(5) *Action on appeals.* Appeals shall be made to the Alaska Native Claims Appeal Board in accordance with Subpart J of Part 4 of this title. Decisions of the Board on village eligibility appeals are not final until personally approved by the Secretary.

(6) *Applications by unlisted villages for determination of eligibility.* The head or any authorized subordinate officer of a Native village not listed in section 11(b) of the Act may file on behalf of the unlisted village an application for a determination of its eligibility for land benefits under the act. Such application shall be filed in duplicate with the Director, Juneau Area Office, Bureau of Indian Affairs, prior to September 1, 1973. If the application does not constitute prima facie evidence of compliance with the requirements of paragraph (b) of this section, he shall return the application to the party filing the same with a statement of reasons for return of the application, but such filing, even if returned, shall constitute timely filing of the application. The Director, Juneau Area Office, Bureau of Indian Affairs, shall immediately forward an application which appears to meet the criteria for eligibility to the appropriate office of the Bureau of Land Management for filing. Each application must identify the township or townships in which the Native village is located.

(7) *Segregation of land.* The receipt of the selection application for filing by the Bureau of Land Management shall operate to segregate the lands in the vicinity of the village as provided in sections 11(a)(1) and (2) of the Act.

(8) *Action on application for eligibility.* Upon receipt of an application which appears to meet the criteria for eligibility, the Director, Juneau Area Office, Bureau of Indian Affairs, shall have a notice of the filing of the application published in the FEDERAL REGISTER and in one or more newspapers of general circulation in Alaska and shall promptly review the statements contained in the application. He shall investigate and examine available records and evidence that may have a bearing on the character of the village and its eligibility pursuant to this Subpart 2651, and thereafter make findings of fact as to the character of the village. No later than December 19, 1973, the Director, Juneau Area Office, Bureau of Indian Affairs, shall make a determination as to the eligibility of the village as a Native village for land benefits under the act and shall issue a decision. He shall publish his decision in the FEDERAL REGISTER and in one or more newspapers of gen-

eral circulation in Alaska and shall mail a copy of the decision to the representative or representatives of the village, all villages in the region in which the village is located, all regional corporations, and the State of Alaska.

(9) *Protest to eligibility determination.* Any interested party may protest a decision of the Director, Juneau Area Office, Bureau of Indian Affairs, regarding the eligibility of a Native village for land benefits under the provisions of sections 11(b)(3)(A) and (B) of the Act by filing a notice of protest with the Director, Juneau Area Office, Bureau of Indian Affairs, within 30 days from the date of publication of the decision in the FEDERAL REGISTER. A copy of the protest must be mailed to the representative or representatives of the village, all villages in the region in which the village is located, all regional corporations within Alaska, the State of Alaska, and any other parties of record. If no protest is received within the 30-day period, the decision shall become final and the Director, Juneau Area Office, Bureau of Indian Affairs, shall certify the record and the decision to the Secretary. No protest shall be considered which is not accompanied by supporting evidence. Anyone protesting a decision concerning the eligibility or ineligibility of an unlisted Native village shall have the burden of proof in establishing that the decision is incorrect. Anyone appealing a decision concerning the eligibility or ineligibility of an unlisted Native village shall have the burden of proof in establishing that the decision is incorrect.

(10) *Action on protest appeal.* Upon receipt of a protest, the Director, Juneau Area Office, Bureau of Indian Affairs, shall follow the procedure outlined in paragraph (a)(4) of this section. If an appeal is taken from a decision on eligibility, the provisions of paragraph (a)(5) of this section shall apply.

(b) Except as provided in paragraph (b)(4) of this section, villages must meet each of the following criteria to be eligible for benefits under sections 14(a) and (b) of the act:

(1) There must be 25 or more Native residents of the village on April 1, 1970, as shown by the census or other evidence satisfactory to the Secretary. A Native properly enrolled to the village shall be deemed a resident of the village.

(2) The village shall have had on April 1, 1970, an identifiable physical location evidenced by occupancy consistent with the Natives' own cultural patterns and life style and at least 13 persons who enrolled thereto must have used the village during 1970 as a place where they actually lived for a period of time: *Provided,* That no village which is known as a traditional village shall be disqualified if it meets the other criteria specified in this subsection by reason of having been temporarily unoccupied in 1970 because of an act of God or government authority occurring within the preceding 10 years.

(3) The village must not be modern and urban in character. A village will be considered to be of modern and urban character if the Secretary determines that it possessed all the following attributes as of April 1, 1970:

(i) Population over 600.

(ii) A centralized water system and sewage system that serves a majority of the residents.

(iii) Five or more business establishments which provide goods or services such as transient accommodations or eating establishments, specialty retail stores, plumbing and electrical services, etc.

(iv) Organized police and fire protection.

(v) Resident medical and dental services, other than those provided by Indian Health Service.

(vi) Improved streets and sidewalks maintained on a year-round basis.

(4) In the case of unlisted villages, a majority of the residents must be Native, but in the case of villages listed in sections 11 and 16 of the Act, a majority of the residents must be Native only if the determination is made that the village is modern and urban pursuant to paragraph (b)(3) of this section.

(43 U.S.C. 1601-1624)

[38 FR 14218, May 30, 1973, as amended at 40 FR 33175, Aug. 6, 1975]

§ 2651.3 Selection period.

Each eligible village corporation must file its selection application(s) not later than December 18, 1974, under sections 12(a) or 16(b) of the Act; and not later than December 18, 1975, under section 12(b) of the Act.

§ 2651.4 Selection limitations.

(a) Each eligible village corporation may select the maximum surface acreage entitlement under sections 12(a) and (b) and section 16(b) of the act. Village corporations selecting lands under sections 12(a) and (b) may not select more than:

(1) 69,120 acres from land that, prior to January 17, 1969, has been selected by, or tentatively approved to, but not yet patented to the State under the Alaska Statehood Act; and

(2) 69,120 acres of land from the National Wildlife Refuge System; and

(3) 69,120 acres of land from the National Forest System.

(b) To the extent necessary to obtain its entitlement, each eligible village corporation shall select all available lands within the township or townships within which all or part of the village is located, and shall complete its selection from among all other available lands. Selections shall be contiguous and, taking into account the situation and potential uses of the lands involved, the total area selected shall be reasonably compact, except where separated by lands which are unavailable for selection or a section in which a body of water comprises more than one-half of the total acreage of a section. The total area selected will not be considered to be reasonably compact if (1) it excludes other lands available for selection within its exterior boundaries; or (2) lands which are similar in character to the village site or lands ordinarily used by the village inhabitants are disregarded in the selection process; or (3) an isolated tract of public land of less than 1,280 acres remains after selection.

(c) The lands selected under sections 12(a) or (b) shall be in whole sections where they are available, or shall include all available lands in less than whole sections, and, wherever feasible, shall be in units of not less than 1,280 acres. Lands selected under section 16(b) of the Act shall conform to paragraph (b) of this section and shall conform as nearly as practicable to the U.S. land survey system.

(d) Village corporation selections within sections 11 (a)(1) and (a)(3) areas shall be given priority over regional corporation selections for the same lands.

(e) Village or regional corporations are not required to select lands within an unpatented mining claim or millsite. Unpatented mining claims and millsites shall be deemed to be selected, unless they are excluded from the selection by metes and bounds or other suitable description and there is attached to the selection application a copy of the notice of location and any amendments thereto. If the village or regional corporation selection omits lands within an unpatented mining claim or millsite, this will not be construed as violating the requirements for compactness and contiguity. If, during the selection period, the excepted mining claims or millsites are declared invalid, or under the State of Alaska mining laws are determined to be abandoned, the selection will no longer be considered as compact and contiguous. The corporation shall be required to amend its selection, upon notice from the authorized officer of the Bureau of Land Management, to include the lands formerly included in the mining claim or millsite. If the corporation fails to amend its selection to include such lands, the selection may be rejected.

(f) Eligible village corporations may file applications in excess of their total entitlement. To insure that a village acquires its selection in the order of its priorities, it should identify its choices numerically in the order it wishes them granted. Such selections must be filed not later than December 18, 1974, as to sections 12(a) or 16(b) selections and December 18, 1975, as to section 12(b) selections.

(g) Whenever the Secretary determines that a dispute exists between villages over land selection rights, he shall accept, but not act on, selection applications from any party to the dispute until the dispute has been resolved in accordance with section 12(e) of the Act.

(h) Village or regional corporations may, but are not required to, select lands within pending Native allotments. If the village or regional corporation selection omits lands within a pending Native allotment, this will not be construed as violating the requirements for compactness and contiguity. If, during the selection period, the pending Native allotment is finally rejected and closed, the village or regional corporation may amend its selection application to include all of the land formerly in the Native allotment application, but is not required to do so to meet the requirements for compactness and contiguity.

[38 FR 14218, May 30, 1973, as amended at 39 FR 34543, Sept. 26, 1974]

§ 2651.5 Conveyance reservations.

In addition to the conveyance reservations in § 2650.4 of this chapter, conveyances issued to village corporations shall provide for the transfer of the surface estates specified in section 14(c) of the Act, and shall be subject to valid existing rights under section 14(g) of the Act.

§ 2651.6 Airport and air navigation facilities.

(a) Every airport and air navigation facility owned and operated by the United States which the Secretary determines is actually used in connection with the administration of a Federal program will be deemed a "Federal installation" under the provisions of section 3(e) of the Act, and the Secretary will determine the smallest practicable tract which shall enclose such Federal installations. Such Federal installations are not public lands as defined in the act and are therefore not "lands available for selection" under the provisions of these regulations.

(b) The surface of all other lands of existing airport sites, airway beacons, or other navigation aids, together with such additional acreage or easements as are necessary to provide related services and to insure safe approaches to airport runways, shall be conveyed by the village corporation to the State of Alaska, and the Secretary will include in the conveyance to any village corporation any and all covenants which he deems necessary to insure the fulfillment of this obligation.

Subpart 2652—Regional Selections

§ 2652.0-3 Authority.

Sections 12 (a)(1) and (c)(3) provide for selections by regional corporations; and sections 14 (e), (f), (h), (1), (2), (3), (5), and (8), provide for the conveyance to regional corporations of the selected surface and subsurface estates, as appropriate.

§ 2652.1 Entitlement.

(a) Eligible regional corporations may select the maximum acreage granted pursuant to section 12(c) of the act. They will be notified by the Secretary of their entitlement as expeditiously as possible.

(b) Where subsurface rights are not available to the eligible regional corporations in lands whose surface has been conveyed under section 14 of the Act, the regional corporations may select an equal subsurface acreage from lands withdrawn under sections 11(a) (1) and (3) of the Act, within the region, if possible.

(c) As appropriate, the regional corporations will receive title to the subsurface estate of lands, the surface estate of which is conveyed pursuant to section 14 of the act.

(d) If a 13th regional corporation is organized under section 7(c) of the act, it will not be entitled to any grant of lands.

§ 2652.2 Selection period.

All regional corporations must file their selection applications not later than December 18, 1975, for lands other than those allocated under section 14(h)(8) of the Act.

§ 2652.3 Selection limitations.

(a) To the extent necessary to obtain its entitlement, each regional corporation must select all available lands withdrawn pursuant to sections 11(a)(1)(B) and (C) of the Act, before selecting lands withdrawn pursuant to section 11(a)(3) of the Act, except that regional corporations selecting lands withdrawn pursuant to sections 11(a)(1) (B) and (C) may select only even-numbered townships in even-numbered ranges and only odd-numbered townships in odd-numbered ranges.

(b) Village corporation selections within section 11(a)(1) and section 11(a)(3) areas shall be given priority over regional corporation selections for the same lands.

(c) Whenever a regional selection is made in any township, the regional corporation shall select all available lands in that township: *Provided*, That such selection would not exceed the entitlement of that regional corporation.

(d) Subsurface selections made by a regional corporation pursuant to section 12(a) of the Act shall be contiguous and the total area selected shall be reasonably compact, except as separated by subsurface interests that are not the property of the United States including subsurface interests under bodies of water, and the selection shall be in whole sections where they are available, or shall include all available subsurface interests in less than whole sections and, wherever feasible, shall be in units of not less than 1,280 acres. The total area selected shall not be considered to be reasonably compact if (1) it excludes other subsurface interests available for selection within its exterior boundaries; or (2) an isolated tract of subsurface interests owned by the United States of less than 1,280 acres remains after selection.

(e) Regional corporations are not required to select lands within unpatented mining claims or millsites, as provided in § 2651.4(e) of this chapter.

(f) Regional corporations may file applications in excess of their total entitlement. To insure that a regional corporation acquires its selections in the order of its priorities, it should identify its choices numerically in the order it wishes them granted.

§ 2652.4 Conveyance reservations.

In addition to the conveyance reservations in § 2650.4 of this chapter, conveyances issued to regional corporations for the subsurface estate of lands whose surface has been conveyed to village corporations shall provide that the right to explore, develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native village shall be subject to the consent of the village corporation.

Subpart 2653—Miscellaneous Selections

§ 2653.0-3 Authority.

Section 14(h) of the Act requires the Secretary to withdraw and to convey 2 million acres of unreserved and unappropriated public lands located outside the areas withdrawn by sections 11 and 16 of the Act. The Secretary will convey the land in part as follows:

(a) Title to existing cemetery sites and historical places to the regional corporations for the regions in which the lands are located;

(b) Title to the surface estate to any Native group that qualifies pursuant to this Subpart 2653;

(c) Title to the surface estate of lands to the Natives residing in each of the cities of Sitka, Kenai, Juneau, and Kodiak, who have incorporated;

(d) Title to the surface estate of land to a Native as a primary place of residence.

(e) Title to the regional corporations for lands selected, if any remain, pursuant to section 14(h)(8) of the Act; and

(f) Title to the subsurface estate to the regional corporations of lands conveyed under paragraphs (b) and (d) of this section and title to the regional corporations to the subsurface estate to those lands not located in a National Wildlife Refuge under paragraph (c) of this section.

[38 FR 14218, May 30, 1973, as amended at 41 FR 14737, Apr. 7, 1976]

§ 2653.0-5 Definitions.

(a) "Cemetery site" means a burial ground consisting of the gravesites of one or more Natives.

(b) "Historical place" means a distinguishable tract of land or area upon which occurred a significant Native historical event, which is importantly associated with Native historical or cultural events or persons, or which was subject to sustained historical Native activity, but sustained Native historical activity shall not include hunting, fishing, berry-picking, wood gathering, or reindeer husbandry. However, such uses may be considered in the evaluation of the sustained Native historical activity associated with the tract or area.

(c) "Native group" means any tribe, band, clan, village, community or village association of Natives composed of less than 25, but more than 3 Natives, who comprise a majority of the residents of a locality and who have incorporated under the laws of the State of Alaska.

(d) "Primary place of residence" means a place comprising a primary place of residence of an applicant on August 31, 1971, at which he regularly resides on a permanent or seasonal basis for a substantial period of time.

[38 FR 14218, May 30, 1973, as amended at 41 FR 14737, Apr. 7, 1976]

§ 2653.1 Conveyance limitations.

(a) Under section 14(h) of the Act, a total of 2 million acres may be selected for cemetery sites and historical places, Native groups, corporations formed by the Native residents of Sitka, Kenai, Juneau, and Kodiak, for primary places of residence, and for Native allotments approved as provided in section 18 of the Act. Selections must be made before July 1, 1976. Of this total amount:

(1) 500,000 acres will be set aside to be used by the Secretary to satisfy applications filed pursuant to section 14(h) (1), (2), and (5) of the Act. The 500,000 acres will be allocated by: (i) Dividing 200,000 acres among the regions based on the number of Natives enrolled in each region; and, (ii) dividing 300,000 acres equally among the regions;

(2) 92,160 acres will be set aside for possible allocation by the Secretary to corporations formed by the Natives residing in Sitka, Kenai, Juneau, and Kodiak;

(3) 400,000 acres will be set aside to be used by the Secretary to satisfy Native allotment applications approved prior to December 18, 1975, under the Act of May 17, 1906 (34 Stat. 197), the Act of February 8, 1887 (24 Stat. 389), as amended and supplemented, and the Act of June 25, 1910 (36 Stat. 863). Any Native allotment applications pending before the Bureau of Indian Affairs or the Bureau of Land Management on December 18, 1971, will be considered as "pending before the Department." Those allotment applications which have been determined to meet the requirements of the acts cited herein and for which survey has been requested before December 18, 1975, shall be considered "approved" under section 14(h)(6) of the Act and shall be charged against the acreage.

(b) After subtracting the number of acres used in accordance with paragraph (a) of this section from 2 million acres, the remainder will, after July 1, 1976, be reallocated by the Secretary among the regional corporations in accordance with the number of Natives enrolled in each region.

(c) No Native allotment applications pending before the Secretary on December 18, 1971, will be rejected solely for the reason that the acreage set aside by paragraph (a)(3) of this section has been exhausted.

[38 FR 14218, May 30, 1973, as amended at 41 FR 14737, Apr. 7, 1976]

§ 2653.2 Application procedures.

(a) All applications must be filed in accordance with the procedures in § 2650.2(a) of this chapter.

(b) Applications by corporations of Native groups under section 14(h)(2) and by a Native for a primary place of residence under section 14(h)(5) of the Act must be accompanied by written concurrence of the affected regional corporation. In the case of Native groups, such concurrence must also indicate how much land per member of the Native group, not to exceed 320 acres per member, the regional corporation recommends that the Secretary convey. Any application not accompanied by the necessary concurrence and recommendation of the affected region will be rejected.

(c) Native groups, and Natives residing in Sitka, Kenai, Juneau, and Kodiak, as provided in sections 14(h)(2) and (3), respectively, must comply with the applicable terms of § 2650.2(a), (c), (d), (e), and (f) of this chapter.

(d) The filing of an application under the regulations of this section will constitute a request for withdrawal of the lands, and will segregate the lands from all other forms of appropriation under the public land laws, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act, as amended, subject to valid existing rights, but will not segregate the lands from selections under section 12 or 16 of the Act. The segregative effect of such an application will terminate if the application is rejected.

§ 2653.3 Lands available for selection.

(a) Selection may be made for existing cemetery sites or historical places, Native groups, corporations formed by the Natives residing in Sitka, Kenai, Juneau, and Kodiak, and for primary places of residence, from any unappropriated and unreserved lands which the Secretary may withdraw for these purposes: *Provided*, That National Wildlife Refuge System lands and National Forest lands may be made available as provided by section 14(h)(7) of the Act and the regulations in this subpart. Selections for these purposes may also be made from any unappropriated and unreserved lands which the Secretary may withdraw from lands formerly withdrawn and not selected under section 16 of the Act and after December 18, 1975, from lands formerly withdrawn under section 11(a)(1) or 11(a)(3) and not selected under sections 12 or 19 of the Act.

(b) After December 18, 1975, selection of the lands allocated pursuant to § 2653.1(b), shall be made from any lands previously withdrawn under sections 11 or 16 of the act which are not otherwise appropriated.

(c) A withdrawal made pursuant to section 17(d)(1) of the Act which is not part of the Secretary's recommendation to Congress of December 18, 1973, on the four national systems shall not preclude a withdrawal pursuant to section 14(h) of the Act.

[41 FR 14737, Apr. 7, 1976; 41 FR 17909, Apr. 29, 1976]

§ 2653.4 Termination of selection period.

Except as provided in § 2653.10, applications for selections under this subpart will be rejected after all allocated lands, as provided in § 2653.1, have been exhausted, or if the application is received after the following dates, whichever occurs first:

(a) As to primary place of residence—December 18, 1973.

(b) As to all recipients described in sections 14(h) (1), (2), and (3) of the Act—December 31, 1976.

(c) As to all recipients under section 14(h)(8) of the Act and § 2653.1(b)—September 18, 1978.

[41 FR 14737, Apr. 7, 1976, as amended at 41 FR 44041, Oct. 6, 1976; 43 FR 11822, Mar. 22, 1978]

§ 2653.5 Cemetery sites and historical places.

(a) The appropriate regional corporation may apply to the Secretary for the conveyance of existing cemetery sites or historical places pursuant to section 14(h) of the Act. The Secretary may give favorable consideration to these applications: *Provided*, That the Secretary determines that the criteria in these regulations are met: *And provided further*, That the regional corporation agrees to accept a covenant in the conveyance that these cemetery sites or historical places will be maintained and preserved solely as cemetery sites or historical places by the regional corporation, in accordance with the provisions for conveyance reservations in § 2653.11.

(b) A historical place may be granted in a National Wildlife Refuge or National Forest unless, in the judgment of the Secretary, the events or the qualities of the site from which it derives its particular value and significance as a historical place can be commemorated or found in an alternative site outside the refuge or forest, or if the Secretary determines that the conveyance could have a substantial detrimental effect on (1) a fish or wildlife population, (2) its habitat, (3) the management of such population or habitat, or (4) access by a fish or wildlife population to a critical part of its habitat.

(c) Although the existence of a cemetery site or historical place and a proper application for its conveyance create no valid existing right, they operate to segregate the land from all other forms of appropriation under the public land laws. Conveyances of lands reserved for the National Wildlife Refuge System made pursuant to this subpart are subject to the provisions of section 22(g) of the Act and § 2650.4-6 as though they were conveyances to a village corporation.

(d) For purposes of evaluating and determining the eligibility of properties as historical places, the quality of significance in Native history or culture shall be considered to be present in places that possess integrity of location, design, setting, materials, workmanship, feeling and association, and:

(1) That are associated with events that have made a significant contribution to the history of Alaskan Indians, Eskimos or Aleuts, or

(2) That are associated with the lives of persons significant in the past of Alaskan Indians, Eskimos or Aleuts, or

(3) That possess outstanding and demonstrably enduring symbolic value in the traditions and cultural beliefs and practices of Alaskan Indians, Eskimos or Aleuts, or

(4) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or

(5) That have yielded, or are demonstrably likely to yield information important in prehistory or history.

(e) Criteria considerations for historic places: Ordinarily, cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible as a historical place unless they fall within one of the following categories:

(1) A religious property deriving primary significance from architectural or artistic distinction or historical importance;

(2) A building or structure removed from its original location but which is the surviving structure most importantly associated with a historic person or event;

(3) A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life;

(4) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events;

(5) A reconstructed building when accurately executed in a suitable environment and preserved in a dignified manner as part of a restoration master plan and when no other building or structure with the same association has survived;

(6) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own historical significance; or

(7) A property achieving significance within the past 50 years if it is of exceptional importance.

(f) Applications by a regional corporation under section 14(h)(1) of the Act for conveyance of existing cemetery sites or historical places within its boundaries shall be filed with the proper office of the Bureau of Land Management in accordance with § 2650.2(a) of this chapter. The regional corporation shall include as an attachment to its application for a historical place a statement describing the events that took place and the qualities of the site from which it derives its particular value and significance as a historical place. In making the application, the regional corporation should identify accurately and with sufficient specificity the size and location of the site for which the application is made as an existing cemetery site or historical place to enable the Bureau of Land Management to segregate the proper lands. The land shall be described in accordance with § 2650.2(e) of this chapter, except that if the site under application is less than 2.50 acres or if it cannot be described by a protracted survey description, it shall be described by a metes and bounds description.

(g) Upon receipt of an application for an existing cemetery site or historical place, the Bureau of Land Management shall segregate from all other appropriation under the public land laws the land which it determines, adequately encompasses the site described in the application.

(h) Notice of filing of such application specifying the regional corporation, the size and location of the segregated lands encompassing the site for which application has been made, the date of filing, and the date by which any protest of the application must be filed shall be published once in the FEDERAL REGISTER and in one or more newspapers of general circulation in Alaska once a week for three consecutive weeks by the Bureau of Land Management. The Bureau of Land Management shall then forward the application to the Director, Juneau Area Office, Bureau of Indian Affairs, for investigation, report, and certification and supply a copy to the National Park Service. When an application pertains to lands within a National Wildlife Refuge or National Forest, the Bureau of Land Management shall also forward informational copies of the application and the size and location of segregated lands to the agency or agencies involved.

(i) If, during its investigation, the Bureau of Indian Affairs finds that the location of the site as described in the application is in error, it shall notify the applicant, the Bureau of Land Management, and other affected Federal agencies, of such error. The applicant shall have 60 days from receipt of such notice to file with the Bureau of Land Management an amendment to its application with respect to the location of the site. Upon acceptance of such amendment the Bureau of Land Management shall reprocess the application, including segregation of lands and publication of notice.

(j) The Bureau of Indian Affairs shall identify on a map and mark on the ground, including gravesites or other important items, the location and size of the site or place with sufficient clarity to enable the Bureau of Land Management to locate on the ground said site or place. The Bureau of Indian Affairs, after consultation with the National Park Service and, in the case of refuges and forests, the agency or agencies involved, shall certify as to the existence of the site or place and that it meets the criteria in this subpart.

(1) *Cemetery Sites.* The Bureau of Indian Affairs shall certify specifically that the site is the burial place of one or more Natives. The Bureau of Indian Affairs shall determine whether the cemetery site is in active or inactive use, and if active, it shall estimate the degree of use by Native groups and villages in the area which it shall identify.

(2) *Historical Places.* The Bureau of Indian Affairs shall describe the events that took place and qualities of the site which give it particular value and significance as a historical place.

(k) The Bureau of Indian Affairs shall submit its report and certification along with the written comments and recommendations of the National Park Service and any other Federal agency, to the Bureau of Land Management. If the land is available, the Bureau of Land Management shall issue a decision to convey. However, where the issues in § 2653.5(b) are raised by the reports of the Fish and Wildlife Service or the Forest Service, the State Director, Bureau of Land Management shall submit the record including a land status report, to the Secretary for a resolution of any conflicts. If the land is available for that purpose, the Secretary shall make his determination to convey or not to convey the site to the applicant.

(l) The decision of the Bureau of Land Management or the Secretary shall be served on the applicant and all parties of record in accordance with the provisions of 43 CFR Part 4, Subpart J and shall be published in accordance with § 2650.7 of this part. The decision of the Bureau of Land Management shall become final unless appealed to the Alaska Native Claims Appeals Board in accordance with 43 CFR Part 4, Subpart J. Any agency adversely affected by the certification of BIA or the decision of the Bureau of Land Management may also appeal the matter to the Alaska Native Claims Appeals Board. After a decision to convey an existing cemetery site or historical place has become final, the

Bureau of Land Management shall adjust the segregation of the lands to conform with said conveyance.

(m) For inactive cemeteries, the boundaries of such cemetery sites shall include an area encompassing all actual gravesites including a reasonable buffer zone of not more than 66 feet. For active cemeteries, the boundaries of such sites shall include an area of actual use and reasonable future expansion of not more than 10 acres, but the BLM in consultation with any affected Federal agency may include more than 10 acres upon a determination that special circumstances warrant it. For historical places, the boundaries shall include an area encompassing the actual site with a reasonable buffer zone of not more than 330 feet.

[41 FR 14738, Apr. 7, 1976; 41 FR 17909, Apr. 29, 1976, as amended at 41 FR 49487, Nov. 9, 1976]

NOTE: For a waiver document affecting § 2653.5(h) and (i), see FR Doc. 78-11398; at 43 FR 17942, Apr. 27, 1978.

§ 2653.6 Native groups.

(a) *Eligibility.* (1) The head or any authorized representative of a Native group incorporated pursuant to section 14(h)(2) of the Act may file on behalf of the group an application for a determination of its eligibility under said section of the Act. Such application shall be filed in duplicate with the appropriate officer, Bureau of Land Management, prior to April 16, 1976, in accordance with § 2650.2(a) of this chapter. Upon serialization of the application, the Bureau of Land Management office will forward a copy of such application to the Director, Juneau Area Office, Bureau of Indian Affairs, who shall investigate and report the findings of fact required to be made herein to the Bureau of Land Management with a certification thereof. A copy of an application by a group located within a National Wildlife Refuge or a National Forest will be furnished to the appropriate agency administering the area.

(2) Each application must identify the section, township, and range in which the Native group is located, and must be accompanied by a list of the names of the Native members of the group, a listing of permanent improvements and periods of use of the locality by members, a conformed copy of the group's article of incorporation, and the regional corporation's concurrence and recommendation under § 2653.2(b).

(3) Notice of the filing of such application specifying the date of such filing, the identity and location of the Native group, and the date by which any protest of the application must be filed shall be prepared by the Bureau of Indian Affairs and shall be published once in the FEDERAL REGISTER and in one or more newspapers of general circulation in Alaska once a week for three consecutive weeks by the Bureau of Land Management. Any protest to the application shall be filed with the Bureau of Indian Affairs within the time specified in the notice.

(4) The Bureau of Indian Affairs shall investigate and determine whether each member of a Native group formed pursuant to section 14(h)(2) of the Act is enrolled pursuant to section 5 of the Act. The Bureau of Indian Affairs shall determine whether the members of the Native group actually reside in and are enrolled to the locality specified in its application. The Bureau of Indian Affairs shall specify the number and names of Natives who actually reside in and are enrolled to the locality, including children who are members of the group and who are temporarily elsewhere for purposes of education, and it shall further determine whether the members of the Native group constitute the majority of the residents of the locality where the group resides. The Bureau of Indian Affairs shall determine and identify the exterior boundaries of the Native group's locality and the location of all those permanent structures of the Native group used as dwelling houses.

(5) The Native group must have an identifiable physical location. The members of the group must use the group locality as a place where they actually live in permanent structures used as dwelling houses. The group must have the character of a separate community, distinguishable from nearby communities, and must be com-

posed of more than a single family or household. Members of a group must have enrolled to the group's locality pursuant to section 5 of the Act, must actually have resided there as of the 1970 census enumeration date, and must have lived there as their principal place of residence since that date.

(6) The Bureau of Indian Affairs shall issue its certification, containing its findings of fact required to be made herein and its determination of the eligibility of the Native group, except it shall issue a certification of ineligibility when it is notified by the Bureau of Land Management that the land is unavailable for selection by such Native group. It shall send a copy thereof by certified mail to the Bureau of Land Management, the Native group, its regional corporation and any party of record.

(7) Appeals concerning the eligibility of a Native group may be made to the Alaska Native Claims Appeals Board in accordance with 43 CFR Part 4, Subpart J.

(b) *Selections.* (1) Native group selections shall not exceed the amount recommended by the regional corporation or 320 acres for each Native member of a group, or 7,680 acres for each Native group, whichever is less. Any acreage selected in excess of that number shall be identified as alternate selections and shall be numerically ordered to indicate selection preference. Native groups will not receive land benefits unless the land which is occupied by their permanent structures used as dwelling houses is available, or in the case where such land is not State or Federally owned, the land which is contiguous to and immediately surrounds the land occupied by their permanent structures used as dwelling houses is available, and is not within a wildlife refuge or forest, pursuant to section 14(h) of the Act. Public lands which may be available for this purpose are set forth in § 2653.3 (a) and (c). Conveyances of lands reserved for the National Wildlife Refuge System made pursuant to this part are subject to the provisions of section 22(g) of the Act and § 2650.4-6 of this chapter as though they were conveyances to a village corporation.

(2) Upon receipt of the applications of a Native group for a determination of its eligibility under section 14(h)(2) of the Act, the Bureau of Land Management shall segregate the land encompassed within the group locality from land available for that purpose pursuant to § 2653.6(b)(1). However, segregation of land for Native groups whose dwelling structures are located outside but adjacent to a National Wildlife Refuge or National Forest shall not include such reserved land, unless the Native group's dwelling structures are located on land excepted from the Kodiak National Wildlife Refuge pursuant to Public Land Order No. 1634 (FR Doc. 58-3696, filed May 16, 1958).

(3) The Bureau of Indian Affairs shall visit the locality of the group and shall recommend to the Bureau of Land Management the manner in which the segregation should be modified to encompass the residences of as many members as possible while allowing for the inclusion of the land most intensively used by members of the Native group. The recommended segregation must be contiguous and as compact as possible. The Bureau of Land Management may segregate the land accordingly provided such lands are otherwise available in accordance with §§ 2653.6(b)(1) and 2653.6(b)(2). If the Bureau of Land Management finds the lands are unavailable for selection by a Native group, it shall notify the Bureau of Indian Affairs.

(4) Selections shall be made from lands segregated for that purpose and shall be filed prior to July 1, 1976. Selections shall be contiguous and taking into account the situation and potential uses of the lands involved, the total area selected shall be reasonably compact except where separated by lands which are unavailable for selection. The total area selected will not be considered to be reasonably compact if (i) it excludes other lands available for selection within its exterior boundaries; or (ii) an isolated tract of public land of less than 640 acres remains after selection. The lands selected shall be in quarter sections where they are available unless the exhaustion of the acreage which the group may be entitled to select does not

permit the selection of a quarter section and shall include all available lands in less than quarter sections. Lands selected shall conform as nearly as practicable to the United States land survey system.

(5) A Native group whose eligibility has not been finally determined may file its land selections as if it were determined to be eligible. The Bureau of Land Management shall release from segregation the lands not selected and shall continue segregation of the selected land until the lands are conveyed or the group is finally determined to be ineligible. However, in the case of a group determined to be ineligible by the Alaska Native Claims Appeals Board, the segregation shall be continued for a period of 60 days from the date of such decision.

(6) Where any conflict in land selection occurs between any eligible Native groups, the Bureau of Land Management shall request the appropriate regional corporation to recommend the manner in which such conflict should be resolved.

(7) The Bureau of Land Management shall issue a decision on the selection of a Native group determined to be eligible and shall serve a copy of such decision by certified mail on the Native group, its regional corporation and any party of record and the decision shall be published in accordance with § 2650.7 of this part.

(8) Appeals from the Bureau of Land Management decision on the selection by a Native group under this section shall be made to the Alaska Native Claims Appeals Board in accordance with 43 CFR Part 4, Subpart J.

[41 FR 14739, Apr. 7, 1976, as amended at 41 FR 49487, Nov. 9, 1976]

NOTE: For a waiver document affecting § 2653.6(a)(3), see FR Doc. 78-11398; at 43 FR 17942, Apr. 27, 1978.

§ 2653.7 Sitka-Kenai-Juneau-Kodiak selections.

(a) The corporations representing the Natives residing in Sitka, Kenai, Juneau, and Kodiak, who incorporate under the laws of the State of Alaska, may each select the surface estate of up to 23,040 acres of lands of similar character located in reasonable proximity to those municipalities.

(b) The corporations representing the Natives residing in Sitka, Kenai, Juneau, and Kodiak, shall nominate not less than 92,160 acres of lands within 50 miles of each of the four named cities which are similar in character to the lands in which each of the cities is located. After review and public hearings, the Secretary shall withdraw up to 46,080 acres near each of the cities from the lands nominated. Each corporation representing the Native residents of the four named cities may select not more than one-half the area withdrawn for selection by that corporation. The Secretary shall convey the area selected.

§ 2653.8 Primary place of residence.

(a) An application under this subpart may be made by a Native who occupied land as a primary place of residence on August 31, 1971.

(b) Applications for a primary place of residence must be filed not later than December 18, 1973.

§ 2653.8-1 Acreage to be conveyed.

A Native may secure title to the surface estate of only a single tract not to exceed 160 acres under the provisions of this subpart, and shall be limited to the acreage actually occupied and used. An application for title under this subpart shall be accompanied by a certification by the applicant that he will not receive title to any other tract of land pursuant to sections 14 (c)(2), (h)(2), or 18 of the Act.

§ 2653.8-2 Primary place of residence criteria.

(a) *Periods of occupancy.* Casual or occasional use will not be considered as occupancy sufficient to make the tract applied for a primary place of residence.

(b) *Improvements constructed on the land.* (1) Must have a dwelling.

(2) May include associated structures such as food cellars, drying racks, caches etc.

(c) *Evidence of occupancy.* Must have evidence of permanent or seasonal occupancy for substantial periods of time.

§ 2653.8-3 Appeals.

Appeals from decisions made by the Bureau of Land Management on applications filed pursuant to section 14(h)(5) of the Act shall be made to the Alaska Native Claims Appeals Board in accordance with 43 CFR Part 4, Subpart J.

[41 FR 14740, Apr. 7, 1976]

§ 2653.9 Regional selections.

(a) Applications by a regional corporation for selection of land within its boundaries under section 14(h)(8) of the Act shall be filed with the proper office of the Bureau of Land Management in accordance with § 2650.2(a). Selections made under section 14(h)(1), (2), (3), and (5) of the Act will take priority over selections made pursuant to section 14(h)(8). Lands available for section 14(h)(8) selections are those lands originally withdrawn under section 11(a)(1), (3), or 16(a) of the Act and not conveyed pursuant to selections made under sections 12(a), (b), or (c), 16(b) or 19 of the Act.

(b) A regional corporation may select a total area in excess of its entitlement to ensure that it will obtain its entitlement in the event of any conflicts. Any acreage in excess of its entitlement shall be identified as alternate selections and shall be numerically ordered on a section by section basis to indicate selection preference.

(c) Selections need not be contiguous but must be made along section lines in reasonably compact tracts of at least 5,760 acres, not including any unavailable land contained therein. The exterior boundaries of such tracts shall be in linear segments of not less than two miles in length, except where adjoining unavailable lands or where shorter segments are necessary to follow section lines where township lines are offset along standard parallels caused by the convergence of the meridians. However, selected tracts may contain less than 5,760 acres where there is good cause shown for such selection, taking into consideration good land management planning and principles for the potentially remaining public lands, and which would not leave unduly fragmented tracts of such public lands. Each tract selected shall not be considered to be reasonably compact if (1) it excludes other lands for selection within its exterior boundaries, or (2) an isolated tract of public land of less than 1,280 acres remains after selection of the total entitlement. Regional corporations shall not be precluded from selecting less than 5,760 acres where the entire tract available for selection constitutes less than 5,760 acres. Selection shall conform as nearly as practicable to the United States land survey system.

(d) Notice of the filing of such selections, including the date by which any protest of the selection should be filed, shall be published once in the FEDERAL REGISTER and one or more newspapers of general circulation in Alaska once a week for three consecutive weeks by the Bureau of Land Management. Any protest to the application should be filed in the Bureau of Land Management office in which such selections were filed within the time specified in the notice.

(e) Appeals from decisions made by the Bureau of Land Management with respect to such selections shall be made to the Alaska Native Claims Appeals Board in accordance with 43 CFR Part 4, Subpart J.

[41 FR 14740, Apr. 7, 1976, as amended at 41 FR 49487, Nov. 9, 1976]

NOTE: For waiver document affecting § 2653.9(d), see FR Doc. 78-11398, at 43 FR 17942, Apr. 27, 1978. For waiver document affecting § 2653.9(c), see FR Doc. 80-14553, at 45 FR 31110, May 12, 1980.

§ 2653.10 Excess selections.

Where land selections by a regional corporation, Native group, any of the four named cities, or a Native pursuant to section 14(h) (1), (2), (3), or (5) exceed the land entitlement, the Bureau of Land Management may request such corporation to indicate its preference among lands selected.

[41 FR 14740, Apr. 7, 1976]

§ 2653.11 Conveyance reservations.

(a) Conveyances issued pursuant to this subpart are subject to the conveyance reservations described in § 2650.4 of this chapter.

(b) In addition to the reservations provided in paragraph (a) of this section, conveyance for cemetery sites or historical places will contain a covenant running with the land providing that (1) the regional corporation shall not authorize mining or mineral activity of any type, nor shall it authorize any use which is incompatible with or is in derogation of the values of the area as a cemetery site or historical place. Standards for determining uses which are incompatible with or in derogation of the values of the area are found in relevant portions of 36 CFR 800.9 (1974); and (2) that the United States reserves the right to seek enforcement of the covenant in an action in equity. The covenant placed in this subsection may be released by the Secretary, at his discretion, upon application of the regional corporation grantee showing that extraordinary to circumstances of a nature to warrant the release have arisen subsequent to the conveyance.

(c) Conveyances for cemetery sites and historical places shall also contain the covenant required by § 2650.4-6 of this chapter.

[38 FR 14218, May 30, 1973. Redesignated and amended at 41 FR 14740, Apr. 7, 1976]

Subpart 2654—Native Reserves

§ 2654.0-3 Authority.

Section 19(b) of the Act authorizes any village corporation(s) located within a reserve defined in the act to acquire title to the surface and subsurface estates in any reserve set aside for the use and benefit of its stockholders or members prior to December 18, 1971. Such acquisition precludes any other benefits under the act.

§ 2654.0-5 Definitions.

"Reserve lands" means any lands reserved prior to the date of enactment of the act which are subject to being taken in lieu of other benefits under the act pursuant to section 19(b) of the Act.

§ 2654.1 Exercise of option.

(a) Any village corporation which has not by December 18, 1973, elected to acquire title to the reserve lands will be deemed to have elected to receive for itself and its members the other benefits under the Act.

(b) The election of a village to acquire title to the reserve lands shall be exercised in the manner provided by its articles of incorporation. However when two or more villages are located on the same reserve there must be a special election to acquire title to the reserve lands. A majority vote of all the stockholders or members of all corporations located on the reserve is required to acquire title to the reserve lands. For the purpose of this paragraph the stockholders or members shall be determined on the basis of the roll of village residents proposed to be promulgated under 25 CFR Part 43h.7. The regional corporation or village corporations or any member or stockholder of the village corporations involved may request that the election be observed by the Bureau of Indian Affairs.

(c) The results of any election by a village corporation or corporations to acquire title to the reserve lands shall be certified by such village corporation or corporations as being in conformity with the articles of incorporation and by-laws of the village corporation or corporations.

§ 2654.2 Application procedures.

(a) If the corporation or corporations elect to take title to the reserve lands, submission to the Secretary of the certificate of election will constitute an application to acquire title to those lands.

(b) If the village corporation or corporations do not elect to take the reserve lands, they shall apply for their land selections pursuant to Subpart 2651 of this chapter.

§ 2654.3 Conveyances.

(a) Conveyances under this subpart are subject to the provisions of section 14(g) of the act, as provided by § 2650.4 of this chapter.

(b) Conveyances under this subpart to two or more village corporations will be made to them as tenants-in-common, having undivided interests proportionate to the number of their respective members or stockholders determined on the basis of the final roll promulgated by the Secretary pursuant to section 5 of the Act.

Subpart 2655—Federal Installations

AUTHORITY: Alaska Claims Settlement Act of 1971 (43 U.S.C. 1601 et seq.).

SOURCE: 45 FR 70206, Oct. 22, 1980, unless otherwise noted.

§ 2655.0-3 Authority.

Section 3(e)(1) of the act provides that the Secretary shall determine the smallest practicable tract enclosing land actually used in connection with the administration of Federal installations in Alaska.

§ 2655.0-5 Definitions.

As used in this subpart, the term:

(a) "Holding agency" means any Federal agency claiming use of a tract of land subject to these regulations.

(b) "Appropriate selection period" means the statutory or regulatory period within which the lands were available for Native selection under the act.

(c) "State Director" means the Director, Alaska State Office, Bureau of Land Management.

§ 2655.1 Lands subject to determination.

(a) Holding agency lands located within areas withdrawn by sections 11(a)(1), 16(a), or 16(d) of the act and subsequently selected by a village or regional corporation under sections 12 or 16, or selected by the regional corporation under sections 12 or 16, or selected by the regional corporation for southeast Alaska in accordance with section 14(h)(8)(B) are subject to a determination made under this subpart.

(b) Lands in the National Park System, lands withdrawn or reserved for national defense purposes and those former Indian reserves elected under section 19 of the act are not subject to a determination under section 3(e)(1) of the act or this subpart. Lands withdrawn under section 11(a)(3) or 14(h), except 14(h)(8)(B), of the act do not include lands withdrawn or otherwise appropriated by a Federal agency and, therefore, are not subject to a determination under section 3(e)(1) of the act of this subpart.

§ 2655.2 Criteria for determinations.

Land subject to determination under section 3(e)(1) of the act will be subject to conveyance to Native corporations if they are determined to be public lands under this subpart. If the lands are determined not to be public lands, they will be retained by the holding agency. The Bureau of Land Management shall determine:

(a) Nature and time of use.

(1) If the holding agency used the lands for a purpose directly and necessarily connected with the Federal agency as of December 18, 1971; and

(2) If use was continuous, taking into account the type of use, throughout the appropriate selection period; and

(3) If the function of the holding agency is similiar to that of the Federal agency using the lands as of December 18, 1971.

(b) Specifications for area to be retained by Federal agency.

(1) Area shall be no larger than reasonably necessary to support the agency's use.

(2) Tracts shall be described by U.S. Survey (or portion thereof), smallest aliquot part, metes and bounds or protraction diagram, as appropriate.

(3) Tracts may include:

(i) Improved lands;

(ii) Buffer zone surrounding improved lands as is reasonably necessary for purposes such as safety measures, maintenance, security, erosion control, noise protection and drainage;

(iii) Unimproved lands used for storage;

(iv) Lands containing gravel or other materials used in direct connection with the agency's purpose and not used simply as a source of revenue or services. The extent of the areas reserved as a source of materials will be the area disturbed but not depleted as of the date of the end of the appropriate selection period; and

(v) lands used by a non-governmental entity or private person for a use that has a direct, necessary and substantial connection to the purpose of the holding agency but shall not include lands from which proceeds of the lease, permit, contract, or other means are used primarily to derive revenue.

(c) Interest to be retained by Federal agency.

(1) Generally, full fee title to the tract shall be retained; however, where the tract is used primarily for access, electronic, light or visibility clear zones or right-of-way, an easement may be reserved in lieu of full fee title where the State Director determines that an easement affords sufficient protection, that an easement is customary for the particular use and that it would further the objectives of the act.

(2) Easements reserved in lieu of full fee title shall be reserved under the provisions of section 17(b) of the act and § 2650.4-7 of this title.

§ 2655.3 Determination procedures.

(a) The State Director shall make the determination pursuant to the provisions in this subpart. Where sufficient information has not already been provided, the State Director shall issue written notice to any Federal agency which the Bureau of Land Management has reason to believe might be a holding agency. The written notice shall provide that the information requested be furnished in triplicate to the State Director within 90 days from the receipt of the notice. Upon receipt of information the State Director will promptly provide affected Native corporations with copies of the documents. Upon adequate and justifiable showing as to the need for an extension by the holding agency, the State Director may grant a time extension up to 60 days to provide the information requested in this subpart.

(b) The information to be provided by the holding agency shall include the following for each tract which is subject to determination:

(1) The function and scope of the installation;

(2) A plottable legal description of the lands used;

(3) A list of structures or other alterations to the character of lands and their function, their location on the tract, and date of construction;

(4) A description of the use and function of any unaltered lands;

(5) A list of any rights, interests or permitted uses the agency has granted to others, including other Federal agencies, along with dates of issuance and expiration and copies of any relevant documents;

(6) If available, site plans, drawings and annotated aerial photographs delineating the boundaries of the installation and locations of the areas used; and

(7) A narrative explanation stating when Federal use of each area began; what use was being made of the lands as of December 18, 1971; whether any action has taken place between December 18, 1971, and the end of the appropriate selection period that would reduce the area needed, and the date this action occurred.

(c) The State Director shall request comments from the selecting Native corporation relating to the identification of lands requiring a determination. The period for comment by the Native corporation shall be as provided for the agency in § 2655.3(a) of this title, but shall commence from the date of receipt of the latest copy of the holding agency's submission.

(d) The holding agency has the burden of proof in proceedings before the State Director under this subpart. A determination of the lands to be retained by the holding agency under section 3(e) of the act and this subpart shall be made based on the information available in the case file. If the holding agency fails to present adequate information on which to base a determination, all lands selected shall be approved for conveyance to the selecting Native corporation.

(e) The results of the determination shall be incorporated into appropriate decision documents.

§ 2655.4 Adverse decisions.

(a) Any decision adverse to the holding agency or Native corporation shall become final unless appealed to the Alaska Native Claims Appeal Board in accordance with 43 CFR Part 4, Subpart J. If a decision is appealed, the Secretary may take personal jurisdiction over the matter in accordance with 43 CFR Part 4.5. In the case of appeals from affected Federal agencies, the Secretary may take jurisdiction upon written request from the appropriate cabinet level official. The requesting official, the State Director and any affected Native corporation shall be notified in writing of the Secretary's decision regarding the request for Secretarial jurisdiction and the reasons for the decision shall be communicated in writing to the requesting agency and any other parties to the appeal.

(b) When an appeal to a decision to issue a conveyance is made by a holding agency or a Native corporation on the basis that the Bureau of Land Management neglected to make a determination pursuant to section 3(e)(1) of the act, the matter shall be remanded by the Alaska Native Claims Appeals Board to the Bureau of Land Management for a determination pursuant to section 3(e)(1) of the act and these regulations: *Provided*, That the holding agency or Native corporation has reasonably satisfied the Board that its claim is not frivolous.

Group 2700—Disposition—Sales

PART 2710—SALES—FEDERAL LAND POLICY AND MANAGEMENT ACT

Subpart 2710—Sales—General Provisions

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Subpart 2712—Sales of Public Lands in and around Las Vegas, Nevada

2712.0-3 Authority.
2712.1 Sale procedures.

AUTHORITY: 43 U.S.C. 1713, 1740

SOURCE: 45 FR 39418, June 10, 1980, unless otherwise noted.

Subpart 2710—Sales—General provisions

§ 2710.0-1 Purpose.

The regulations in this part implement the sale authority of section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1713).

§ 2710.0-2 Objective.

The objective is to provide for the orderly disposition at not less than fair market value of public lands identified for sale as part of the land use planning process.

§ 2710.0-3 Authority.

(a) The Secretary of the Interior is authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1713), to sell public lands where, as a result of land use planning, it is determined that the sale of such tract meets any or all of the following disposal criteria:

(1) Such tract was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or

(2) Disposal of such tract shall serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on lands other than public lands and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership; or

(3) Such tract, because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency.

(b) The Secretary of the Interior is authorized by section 310 of the Federal Land Policy and Management Act (43 U.S.C. 1740) to promulgate rules and regulations to carry out the purpose of the Act.

§ 2710.0-5 Definitions.

As used in this part, the term

(a) "Public lands" means any lands and interest in lands owned by the United States and administered by the Secretary through the Bureau of Land Management except:

(1) Lands located on the Outer Continental Shelf;

(2) Lands held for the benefit of Indians, Aleuts, and Eskimos.

(b) "Secretary" means the Secretary of the Interior.

(c) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(d) "Act" means the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701).

(e) "Family sized farm" means the unit of public lands determined to be chiefly valuable for agriculture, and that is of sufficient size, based on land use capabilities, development requirements and economic capability, to provide a level of net income, after payment of expenses and taxes, which will sustain a family sized agribusiness operation above the poverty level for a rural farm family of 4 as determined by the Bureau of Labor Statistics, U.S. Department of Labor, for the calender year immediately preceeding the year of the proposed sale under the regulations of this part. The determination of the practical size is an economic decision to be made on a local area basis considering, but not limited to, factors such as: Climatic conditions, soil character, availability of irrigation water, topography, usual crop(s) of the locale, marketability of the crop(s), production and development costs, and other physical characteristics which shall give reasonable assurance of continued production under proper conservation management.

§ 2710.0-6 Policy.

(a) Sales under this part shall be made only in implementation of an approved land use plan or analysis in accordance with Part 1600 of this title.

(b) Public lands determined to be suitable for sale shall be offered only on the initiative of the Burau of Land Management. Indications of interest to have specific tracts of public lands offered for sale shall be accomplished through public input to the land use planning process. (See §§ 1601.1-1 and 1601.8 of this title).

(c) Sales of public lands shall generally be through competitive bidding procedures provided for in § 2711.3-1 of this title.

(d) Sales of public lands determined to be chiefly valuable for agriculture shall be no larger than necessary to support a family-sized farm.

(e) The sale of family-sized farm units, at any given sale, shall be limited to one unit per bidder and one unit per family. The limit of one unit per family is not to be be construed as limiting children eighteen years or older from bidding in their own right.

(f) Sales under this part shall not be made at less than fair market value. Such value is to be determined by an appraisal performed by a Federal or independent appraiser, as determined by the authorized officer, using the principles contained in the *Uniform Appraisal Standards for Federal Land Acquisitions.* The value of authorized improvements owned by anyone other than the United States upon lands being sold shall not be included in the determination of fair market value. Technical review and approval for conformance with appraisal standards shall be conducted by the authorized officer.

(g) Constraint and discretion shall be used with regard to the terms, covenants, conditions and reservations authorized by section 208 of the Act that are to be in sales patents and other conveyance documents, except where inclusion of such provisions is required by law or for protection of valid existing rights.

§ 2710.0-8 Lands subject to sale.

(a) All public lands, as defined by § 2710.0-5 of this title, and, which meet the disposal criteria specified under § 2710.0-3 of this title, are subject to sale pursuant to this part, except:

(1) Those public lands within the revested Oregon California Railroad and reconveyed Coos Bay Wagon Road grants which are more suitable for management and administration for permanent forest protection and other purposes as provided for in the Acts of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181(a)); May 24, 1939 (53 Stat. 753); and section 701(b) of the Act.

(2) Public lands in units of the National Wilderness Preservation System, National Wild and Scenic Rivers System and National System of Trails.

(3) Public lands classified, withdrawn, reserved or otherwise designated as not available or subject to sale shall not be sold under the regulations of this part until issuance of an order or notice which either opens or provides for such disposition.

(b) Unsurveyed public lands shall not be sold under the regulations of this part until they are officially surveyed under the public land survey system of the United States. Such survey shall be completed and approved by the Secretary prior to any sale.

Subpart 2711—Sales—Procedures

§ 2711.1 Initiation of sale.

§ 2711.1-1 Identification of tracts by land use planning.

(a) Tracts of public lands shall only be offered for sale in implementation of land use planning prepared and/or approved in accordance with subpart 1601 of this title.

(b) Public input proposing tracts of public lands for disposal through sale as part of the land use planning process may be made in accordance with §§ 1601.3, 1601.6-3 or § 1601.8 of this title.

§ 2711.1-2 Notice of realty action.

(a) A notice of realty action offering for sale a tract or tracts of public lands identified for disposal by sale shall be issued, published and sent to parties of interest by the authorized officer not less than 60 days prior to the sale. The notice shall include the terms, convenants, conditions and reservations which are to be included in the conveyance document and the method of sale. The notice shall also provide 45 days after the date of issuance for the right of comment by the public and interested parties.

(b) The notice shall be sent to the Governor of the State within which the public lands are located, the head of the governing body of any political subdivision having zoning or other land use regulatory responsibilities in the geographical area within which the public lands and the head of any political subdivision having administration or public services responsibility in the geographic area within which the public lands are located, are located not less than 60 days prior to the sale. The notice shall be sent to other known interested parties of record including, but not limited to, adjoining landowners and current or past land users.

(c) The notice shall be published once in the FEDERAL REGISTER and once a week for 3 weeks thereafter in a newspaper of general circulation in the general vicinity of the public lands being proposed to be offered for sale.

(d) For tracts of public lands in excess of 2,500 acres, the notice shall be submitted to the Senate and the House of Representatives not less than the 90 days prescribed by section 203 of the Act (43 U.S.C. 1713(c)) prior to the date of sale. The sale may not be held prior to the completion of the congressional notice period unless such period is waived by Congress.

§ 2711.1-3 Sales requiring grazing permit or lease cancellations.

When the sale of a tract, as identified, requires the cancellation of a grazing permit or lease, in its entirety, notice shall be given the permittee or lessee 2 years prior to disposal except in cases of emergency. A permittee or lessee may unconditionally waive the 2-year notice (See 43 CFR 4110.4-2(b)). The publication of a notice of realty action as provided in § 2711.1-2(c) of this title shall constitute notice to the grazing permittee or lessee if such notice has not been previously given.

§ 2711.2 Qualified conveyees.

Tracts sold under this part may only be conveyed to:

(a) A citizen of the United States 18 years of age or over;

(b) A corporation subject to the law of any State or of the United States;

(c) A State, State instrumentality or political subdivision authorized to hold property; and

(d) An entity legally capable of conveying and holding lands or interests therein under the laws of the State within which the lands to be conveyed are located. Where applicable, the entity shall also meet the requirements of paragraphs (a) and (b) of this section.

§ 2711.3 Procedures for sale.

§ 2711.3-1 Sales through competitive bidding.

When public lands are offered through competitive bidding:

(a) The date, time, place, and manner for submitting bids shall be specified in the notice required by § 2711.1-2 of this title.

(b) Bids may be made by a principal or a duly qualified agent.

(c) Sealed bids shall be considered only if received at the place of sale prior to the hour fixed in the notice and are made for at least the fair market value. Each bid shall be accompanied by certified check, postal money order, bank draft or cashier's check made payable to the Bureau of Land Management for not less than one-fifth of the amount of the bid, and shall be enclosed in a sealed envelope which shall be marked as prescribed in the notice. If 2 of more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing. The drawing shall be held by the authorized officer immediately following the opening of the sealed bids.

(d) The highest qualifying sealed bid received shall be publicly declared by the authorized officer. If the notice published pursuant to § 2711.1-2 of this title provides for oral bids, such bids, in increments specified by the authorized officer, shall then be invited. After oral bids, if any, are received, the highest qualifying bid, designated by type, whether sealed or oral, shall be declared by the authorized officer. The person declared to have entered the highest qualifying oral bid shall submit payment by cash, personal check, bank draft, money order, or any combination for not less than one-fifth of the amount of the bid immediately following the close of the sale. The successful bidder, whether such bid is a sealed or oral bid, shall submit the remainder of the full bid price prior to the expiration of 30 days from the date of the sale. Failure to submit the full bid price prior to, but not including the 30th day following the day of the sale, shall result in cancellation of the sale of the specific parcel and the deposit shall be forfeited and disposed of as other receipts of sale. In the event the authorized officer rejects the highest qualified bid or releases the bidder from it, the authorized officer shall determine whether the public lands shall be withdrawn from the market or be reoffered.

(e) If the public lands are not sold pursuant to the notice issued under § 2711.1-2 of this title, they may remain available for sale on a continuing basis until sold as specified in the notice.

(f) The acceptance or rejection of any offer to purchase shall be in writing no later than 30 days after receipt of such offer unless the offerer waives his right to a decision within such 30-day period. In case of a tract of land in excess of 2,500 acres, such acceptance or rejection shall not be given until the expiration of 30 days after the end of the notice to the Congress provided for in § 2711.1-2(d) of this title.

Prior to the expiration of such periods the authorized officer may refuse to accept any offer or may withdraw any tract from sale if he determines that:

(1) Consummation of the sale would be inconsistent with the provisions of any existing law; or

(2) Collusive or other activities have hindered or restrained free and open bidding; or

(3) Consummation of the sale would encourage or promote speculation in public lands.

(g) Until the acceptance of the offer and payment of the purchase price, the bidder has no contractual or other rights against the United States, and no action taken shall create any contractual or other obligations of the United States.

§ 2711.3-2 Sale by other than competitive bidding.

(a) Public lands may be offered for sale utilizing modified competitive bidding procedures when the authorized officer determines it is necessary in order to assure equitable distribution of land among purchasers or to recognize equitable considerations or public policies.

(1) Modified competitive bidding includes, but is not limited to:

(i) Offering to designated bidders the right to meet the highest bid. Refusal or failure to meet the highest bid shall constitute a waiver of such bidding provisions; or

(ii) A limitation of persons permitted to bid on a specific tract of land offered for sale.

(2) Factors that shall be considered in determining when modified competitive bidding procedures shall be used, include but are not limited to: Needs of State and/or local government, adjoining landowners, historical users, and other needs for the tract. A description of the method of modified competitive bidding to be used and a statement indicating the purpose or objective of the bidding procedure selected shall be specified in the notice of realty action required in § 2711.1-2 of this title.

(b) Noncompetitive sales may be utilized when, in the opinion of the authorized officer the public interest would best be served by a direct sale. Examples include, but are not limited to:

(1) A tract identified for transfer to State of local government;

(2) A tract identified for sale that is an integral part of a project of public importance and speculative bidding would jeopardize the timely completion and economic viability of the project; or

(3) There is a need to recognize authorized use, for example, when an existing business would be threatened if the tract were purchased by other than the authorized user.

(c) Once the method of modified competitive or noncompetitive sale is determined and such determination has been issued, published and sent in accordance with procedures of this part, payment shall be by the same instruments as authorized in § 2711.3-1(c) of this title.

(d) Acceptance or rejection of any offer to purchase shall be in accordance with the procedures set forth in § 2711.3-1 (f) and (g) of this title.

§ 2711.4 Compensation for authorized improvements.

§ 2711.4-1 Grazing improvements.

No public lands in a grazing lease or permit may be conveyed until the provisions of Part 4100 of this title concerning compensation for any authorized grazing improvements have been met.

§ 2711.4-2 Other private improvements.

Where public lands to be sold under this part contain authorized private improvements, other than those identified in § 2711.4-1 of this title or those subject to a patent reservation, the owner of such improvements shall be given an opportunity to remove them if such owner has not been declared the purchaser of the lands sold, or the prospective purchaser may compensate the owner of such authorized private improvements and submit proof of compensation to the authorized officer.

§ 2711.5 Conveyance documents.

§ 2711.5-1 Mineral reservation.

Patents and other conveyance documents issued under this part shall contain a reservation to the United States of all minerals. Such minerals shall be subject to the right to explore, prospect for, mine, and remove under applicable law and such regulations as the Secretary may prescribe. However, upon the filing of an application as provided in Part 2720 of this title, the Secretary may convey the mineral interest if all requirements of the law are met. Where such application has been filed and meets the requirements for conveyance, the authorized officer may withhold issuance of a patent or other document of conveyance on lands sold under this part until processing of the mineral conveyance application is completed, at which time a single patent or document of conveyance for the entire estate or interest of the United States may be issued.

§ 2711.5-2 Terms, covenants, conditions, and reservations.

Patents or other conveyance documents issued under this part may contain such terms, covenants, conditions, and reservations as the authorized officer determines are necessary in the public interest to insure proper land use and protection of the public interest as authorized by section 208 of the Act.

§ 2711.5-3 Notice of conveyance.

The authorized officer shall publish a notice in the FEDERAL REGISTER and immediately notify the Governor and the heads of local government of the issuance of conveyance documents for public lands within their respective jurisdiction.

Subpart 2712—Sale of Public Lands in and Around Las Vegas, Nevada

EFFECTIVE DATE NOTE: Subpart 2712 (§§ 2712.0-3 and 2712.1), added at 46 FR 44677, Sept. 4, 1981, expires Dec. 31, 1981.

§ 2712.0-3 Authority.

The Act of December 23, 1980 (Pub. L. 96-586) authorizes and directs the Secretary to sell not more than 700 acres of public lands per calendar year in and around Las Vegas, Nevada. The Federal portion of the proceeds from the sale of such lands is to be used by the United States to acquire environmentally sensitive lands in the Lake Tahoe Basin of California and Nevada.

(Pub. L. 96-586 and 43 U.S.C. 1701 et seq.)

[46 FR 44677, Sept. 4, 1981]

§ 2712.1 Sale procedures.

(a) Sales under this subpart shall not be made at less than fair market value. Fair market value for the purposes of this subpart may be established by offering said lands at public auction. The minimum bid for each tract of land for purposes of offering at public auction shall be determined by the authorized officer under a procedure agreed to by the authorized officer and Clark County, Nevada. The highest bid received shall be considered to be fair market value for a given tract if at least 3 bids have been received for the tract. The authorized officer may set aside the sale of a tract at any time prior to issuance of patent if it is determined that a sale should not be completed for any reason, including a determination that fair market value has not been received, regardless of the number of bids received on a given tract. A tract withdrawn from public sale under this subpart because of a determination that fair market value has not been received at public auction shall be appraised and offered for sale at a time determined by the authorized officer.

(b) Sales under this subpart shall be processed in a manner consistent with the law and the regulations in Subparts 2710 and 2711 of this title, insofar as their general and procedural requirements are consistent with the Act of December 28, 1980, and this subpart.

(c) An offering for sale of public lands in Clark County, Nevada, pursuant to the provisions of this section shall fulfill the requirements of section 2(f) of the Act of December 23, 1980, whether or not the sale is consummated.

(Pub. L. 96-586 and 43 U.S.C. 1701 et seq.)

[46 FR 44677, Sept. 4, 1981]

PART 2720—CONVEYANCE OF FEDERALLY-OWNED MINERAL INTERESTS

Subpart 2720—Conveyance of Federally-Owned Mineral Interests

Sec.

2720.0-1 Purpose.
2720.0-2 Objectives.
2720.0-3 Authority.
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2720.4 Issuance of document of conveyance.
2720.5 Appeals.

AUTHORITY: Secs. 209 and 310 of Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

SOURCE: 44 FR 1342, Jan. 4, 1979, unless otherwise noted.

Subpart 2720—Conveyance of Federally-Owned Mineral Interests

§ 2720.0-1 Purpose.

The purpose of these regulations is to establish procedures under section 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719, for conveyance of mineral interests owned by the United States where the surface is or will be in non-Federal ownership.

§ 2720.0-2 Objectives.

The objective is to allow consolidation of surface and subsurface or mineral ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate non-mineral development and such development is a more beneficial use of the land than the mineral development.

§ 2720.0-3 Authority.

(a) Section 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719(b), authorizes the Secretary of the Interior to convey mineral interests owned by the United States where the surface is or will be in non-Federal ownership, if certain specific conditions are met.

(b) Section 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1740, authorizes the Secretary of the Interior to promulgate rules and regulations to carry out the purposes of the Act.

§ 2720.0-5 Definitions.

As used in this subpart, the term:

(a) "Prospective record owner" means a person who has a contract or other agreement to purchase a tract of land that is in non-Federal ownership with a reservation of minerals in the United States, or a person who is purchasing a tract of land under the provisions of the Federal Land Policy and Management Act of 1976 or other laws authorizing the conveyance of Federal lands subject to the reservation of a mineral interest.

(b) "Known mineral values" means mineral values in lands with underlying geologic formations which are valuable for prospecting for, developing or producing natural mineral deposits. The presence of such mineral deposits in the lands may be known, or geologic conditions may be such as to make the lands prospectively valuable for mineral occurrence.

(c) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part.

§ 2720.1 Application to purchase Federally-owned mineral interests.

§ 2720.1-1 Filing of application.

Any existing or prospective record owner of the surface of land in which mineral interests are reserved or otherwise owned by the United States may file an application to purchase such mineral interests if—

(a) He has reason to believe that there are no known mineral values in the land, or

(b) The reservation of ownership of the mineral interests in the United States interferes with or precludes appropriate non-mineral development of the land and such development would be a more beneficial use of the land than its mineral development.

§ 2720.1-2 Form of application.

(a) An application shall be filed with the proper BLM Office as listed in § 1821.2-1(d) of this title.

(b) No specific form is required.

(c) A non-refundable fee of $50 shall accompany the application.

(d) Each application shall include:

(1) The name, legal mailing address, and telephone number of the existing or prospective record owner of the land included in the application;

(2) Proof of ownership of the land included in the application, and in the case of a prospective record owner, a copy of the contract of conveyance or a statement describing the method by which he will become the owner of record;

(3) In the case of non-Federal ownership of the surface, a certified copy of any patent or other instrument conveying the land included in the application to the applicant; and

(4) As complete a statement as possible concerning (i) the nature of Federally-reserved or owned mineral values in the land, including explanatory information, (ii) the existing and proposed uses of the land, (iii) why the reservation of the mineral interests in the United States is interfering with or precluding appropriate non-mineral development of the land covered by the application (iv) how and why such development would be a more beneficial use of the land than its mineral development, and (v) a showing that the proposed use complies or will comply with State and local zoning and/or planning requirements.

§ 2720.1-3 Action on application.

(a) Within 90 days of receipt of an application to purchase Federally-owned mineral interests, the authorized officer shall, if the application meets the requirements for further processing, determine the amount of deposit required and so inform the applicant.

(b) No application filed under this subpart shall be processed until the applicant has either—

(1) Deposited with the authorized officer an amount of money that the authorized officer estimates is needed to cover administrative costs of processing, including, but not limited to, costs of conducting an exploratory program, if one is required, to determine the character of the mineral deposits in the land, evaluating the existing data [or the data obtained under an approved exploratory program] to aid in determining the fair market value of the mineral interests to be conveyed, and preparing and issuing the documents of conveyance, or

(2) Has obtained the consent of the authorized officer to conduct an exploratory program, such program to be conducted only under a plan of operations approved by the authorized officer after he has obtained the approval of the U.S. Geological Survey and deposited with the authorized officer an amount of money the authorized officer estimates is needed to cover administrative costs of processing, including, but not limited to, costs of evaluating existing data and data submitted from an approved exploratory program to determine the fair market value of the mineral interests to be conveyed and preparing and issuing the documents of conveyance. The authorized officer in reaching a determination as to whether that are any known mineral values in the land and, if so, the estimated costs of an exploratory program, if one is needed, shall rely upon reports on locatable and saleable minerals prepared by the Bureau of Land Management and mineral resource evaluation reports on leasable minerals prepared by the U.S. Geological Survey.

(c) The authorized officer shall inform the applicant of his determination as to the need for an exploratory program, and where appropriate, the estimated cost of such a program. The applicant may request that the exploratory program be arranged by the authorized officer or request the consent of the authorized officer to accomplish any required exploratory program by other means, at his own expense, under a plan of operations approved by the authorized officer after having obtained the approval of the U.S. Geological Survey and to provide the results to the authorized officer for his use and approval. The applicant shall, within 60 days of receipt of such notice, or any extension thereof, respond to the authorized officer's notice, stating whether he wishes to have the authorized officer arrange to have conducted the required exploratory program or requests the consent of the authorized officer to accomplish any required exploratory program by other means. Failure to respond to said notice shall void the application.

(d) If the applicant requests that any required exploratory program be arranged by the authorized officer, he shall submit the sum of money required under paragraph (b) of this section and the authorized officer shall, with the approval of the U.S. Geological Survey, have the exploratory program accomplished so as to aid in determining the fair market value of the Federal mineral interests covered by the application.

(e) If the applicant requests the consent of the authorized officer to accomplish any required exploratory program by other means, at his own expense, he shall at the time of making his request for such consent, file a plan of operations to carry out any required exploratory program for approval by the authorized officer, after the authorized officer has obtained the approval of the U.S. Geological Survey. Such plan of operations shall be sufficient to provide the resource and economic data needed to aid in determining the fair market value of the Federal mineral interests to be conveyed. Said resource and economic data shall include, where appropriate, but not be limited to, geologic maps, geologic cross-sections, tables and descriptive information encompassing lithologic, geochemical, and geophysical data, assays of samples, drill logs and outcrop sections, which aid in establishing the location, nature, quantity, and grade, and which aid in determining the fair market value of the Federal mineral interests in the land covered by the application. The plan of operations shall conform to the laws, regulations and ordinances of all governmental bodies having jurisdiction over the lands covered by the application. The authorized officer shall decide within 90 days of receipt of said request whether he shall or shall not give his consent. The authorized officer shall not give his consent if he determines that the plan of operations is not adequate to supply the resource and economic data needed to aid him in determining the fair market value of the Federal mineral interests to be conveyed. If the authorized officer, in his discretion, and with the approval of the plan of operations by the U.S. Geological Survey, approves the applicant's plan of operations, the applicant may proceed to execute the plan of operations, subject to the supervision of the authorized officer and the U.S. Geological Survey. If the authorized officer does not give his consent to the applicant's request, the applicant may, within 60 days of such refusal, avail himself of the provisions of paragraph (d) of this section. Failure to deposit the required sum within the 60 day period shall void the application. All resource and economic data obtained from the approved exploratory program shall be supplied the authorized officer. The authorized officer shall supply that data needed for determination of the economic value of leasable mineral resources to the U.S. Geological Survey and that needed for determination of the economic value of locatable and saleable mineral resources to the Bureau of Land Management. The authorized officer relying upon those determinations shall determine the fair market value of the Federal mineral interests in the land covered by the application. If the authorized officer determines that the resource and economic data supplied from an approved exploratory program is not adequate to aid in determining the fair market value of the Federal mineral interests to be conveyed, he shall so notify the applicant and state what additional data is needed.

(f) Notwithstanding the provisions of the preceding paragraphs of this section, an application may be rejected without the applicant meeting the requirements of paragraph (b) of this section if the authorized officer determines from an examination of the application or of data readily available to him relating to the land concerned that the application does not meet the requirements of the Act.

§ 2720.2 Determination that an exploratory program is not required.

(a) In instances where available data indicate that there are no known mineral values in the land covered by the application, an exploratory program shall not be required.

(b) An exploratory program shall not be required to prove the presence or absence of mineral values where the lands covered by the application are classified prospectively valuable, but such value is found to be only nominal.

§ 2720.3 Action upon determination of the fair market value of the mineral interests.

(a) Upon the authorized officer's determination that all of the requirements of the Act for conveyance of mineral interests have been met by the applicant and all actions necessary to determine the fair market value of the Federal mineral interests in land covered by the application have been completed, the authorized officer shall notify the applicant in writing of the fair market value of the Federal mineral interests, including the administrative costs involved in development of and issuance of conveyance documents, and give a full and complete statement of the costs incurred in reaching such determination including any sum due the United States or that may be unexpended from the deposit made by the applicant. If the administrative costs of determining the fair market value of the Federal mineral interests exceed the amount of the deposit required of the applicant under this subpart, he will be informed that he is required to pay the difference between the actual costs and the deposit. If the deposit exceeds the administrative costs of determining the fair market value of the Federal mineral interests, the applicant will be informed that he is entitled to a credit for or a refund of the excess. The notice shall also require that payment be made within 90 days from the date of mailing of the notice. Failure to pay the required amount within the allotted time shall constitute a withdrawal of the application and the application will be dismissed and the case closed.

(b) Mineral rights on lands for which an exploratory program is not required under this subpart shall be conveyed upon payment of fair market value for those mineral interests and all administrative costs.

§ 2720.4 Issuance of document of conveyance.

Upon receipt of the payment required by § 2720.3 of this subpart, if any is required, the authorized officer shall issue the necessary document conveying to the applicant the mineral interests of the United States in the land covered by the application.

§ 2720.5 Appeals.

An applicant adversely affected by a decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal pursuant to Part 4 of this title. Decisions of the authorized officer under this subpart shall be subject to reversal only if found to be arbitrary, capricious, and abuse of discretion or otherwise not in accordance with law.

PART 2740—RECREATION AND PUBLIC PURPOSES ACT

Subpart 2740—Recreation and Public Purposes Act: General

Sec.
2740.0-1 Purpose.
2740.0-2 Objective.
2740.0-3 Authority.
2740.0-5 Definitions.
2740.0-6 Policy.
2740.0-7 Cross references.

Subpart 2741—Recreation and Public Purposes Act: Requirements

2741.1 Lands subject to disposition.
2741.2 Qualified applicants.
2741.3 Applications.
2741.4 Guidelines for conveyances and leases under the act.
2741.5 Applications for transfer or change of use.
2741.6 Acreage limitations and general conditions.
2741.7 Price.
2741.8 Patent provisions.

Subpart 2742—Recreation and Public Purposes Act: Omitted Lands and Unsurveyed Islands

Sec.
2742.1 Qualifications of applicants.
2741.2 Survey requirement.
2742.3 Conveyance limitations.
2742.4 Consistency with other laws.

Subpart 2740—Recreation and Public Purposes Act: General

AUTHORITY: Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.).

SOURCE: 44 FR 43471, July 25, 1979, unless otherwise noted.

§ 2740.0-1 Purpose.

These regulations provide guidelines and procedures for transfer of certain public lands under the Recreation and Public Purposes Act as amended (43 U.S.C. 869 et seq.), to States or their political subdivisions, and to nonprofit corporations and associations, for recreational and public purposes.

§ 2740.0-2 Objective.

The objective is to meet the needs of certain State and local governmental agencies and other qualified organizations for public lands required for recreational and public purposes.

§ 2740.0-3 Authority.

(a) The Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.), commonly known as the Recreation and Public Purposes Act, authorizes the Secretary of the Interior to lease or convey public lands for recreational and public purposes under specified conditions.

(b) Section 211 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721), authorizes the Secretary of the Interior to convey to States or their political subdivisions unsurveyed islands determined by the Secretary to be public lands of the United States and "omitted lands" under the Recreation and Public Purposes Act without regard to acreage limitations contained in the Act.

§ 2740.0-5 Definitions.

As used in this part, the term:

(a) "Act" means the Recreation and Public Purposes Act as amended by section 212 of the Federal Land Policy and Management Act of 1976.

(b) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this part.

(c) "Public lands" means any lands and interest in lands administered by the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts and Eskimos.

§ 2470.0-6 Policy.

(a) To assure development of public lands in accordance with a development plan and compliance with an approved management plan, the authorized officer may require that public lands first be leased under the provisions of Subpart 2912 of this title for a period of time prior to issuance of a patent.

(b) Municipal corporations may not secure public lands under this act which are not within convenient access to the municipality and within the same State as the municipality. Other qualified governmental applicants may not secure public lands outside their political boundaries or other area of jurisdiction.

§ 2740.0-7 Cross references.

(a) Requirements and procedures for conveyance of land under the Recreation and Public Purposes Act are contained in Subpart 2741 of this chapter.

(b) Requirements and procedures for leasing of land under the Recreation and Public Purposes Act are contained in Subpart 2912 of this title.

(c) Requirements and procedures for conveyance of unsurveyed islands and omitted lands under Section 211 of the Federal Land Policy and Management Act are contained in Subpart 2742 of this chapter.

Subpart 2741—Recreation and Public Purposes Act: Requirements

AUTHORITY: Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.).

SOURCE: 44 FR 43472, July 25, 1979, unless otherwise noted.

§ 2741.1 Lands subject to disposition.

(a) The act is applicable to any public lands except (1) lands withdrawn or reserved for national forests, national parks and monuments, and national wildlife refuges, (2) Indian lands and lands set aside or held for use by or for the benefit of Indians, Aleuts and Eskimos, and (3) lands which have been acquired for specific purposes.

(b) Revested Oregon and California Railroad grant lands and reconveyed Coos Bay Wagon Road grant lands may only be leased to States and counties and to State and Federal instrumentalities and political subdivisions and to municipal corporations.

(c) Section 211 of the Federal Land Policy and Management Act of 1976 does not apply to public lands within the National Forest System, defined in the Act of August 17, 1974 (16 U.S.C. 1601), the National Park System, the National Wildlife Refuge System and the National Wild and Scenic Rivers System.

§ 2741.2 Qualified applicants.

Applications for any recreational or public purpose may be filed by States, Federal and State instrumentalities and political subdivisions, including counties and municipalities, and nonprofit associations and nonprofit corporations that, by their articles of incorporation or other authority, are authorized to acquire land.

§ 2741.3 Applications.

(a) Applications shall be submitted on forms approved by the Director, Bureau of Land Management.

(b) Each application shall be accompanied by three copies of a statement describing the proposed use of the land. The statement shall show that there is an established or definitely proposed project for such use of the land, present detailed plan and schedule for development of the project and a management plan which includes a description of how any revenues will be used. The provisions of § 1821.2 of this title apply to filings pursuant to this section.

§ 2741.4 Guidelines for conveyances and leases under the act.

(a) Public lands shall be conveyed or leased under the act only for an established or definitely proposed project for which there is a reasonable timetable of development and satisfactory development and management plans.

(b) No public lands having national significance shall be conveyed pursuant to the act.

(c) No more public lands than are reasonably necessary for the proposed use shall be conveyed pursuant to the act.

(d) For proposals involving over 640 acres, public lands shall not be sold or leased pursuant to this act until:

(1) Comprehensive land use plans and zoning regulations for the area in which the lands are located have been adopted by the appropriate State or local authorities.

(2) The authorized officer has held at least one public meeting on the proposal.

(e) Applications shall not be approved unless and until it has been determined that disposal under the act would serve the national interest following the planning requirements of section 202 of the Federal Land Policy and Management Act (43 U.S.C. 1712).

(f) Public lands may be determined to be suitable for lease or sale under the act by the authorized officer on his own motion as a result of demonstrated public needs for public lands for recreational or public purposes during the planning process described in section 202 of the Federal Land Policy and Management Act. Potential applicants should contact the authorized officer and furnish him with conceptual plans of the proposed use early in the planning process so that he can plan for the proposed use of the public lands.

(g) Lands under the jurisdiction of another agency shall not be determined to be suitable for lease or sale without that agency's approval.

(h) The issuance of a notice that public lands are suitable for sale or lease under the act and are classified as such shall segregate such public lands from all other appropriations, including locations under the mining laws, except as provided in the notice of an amendment thereof. If no application is filed within 18 months after issuance of the notice, the segregation shall be automatically vacated and the public lands restored to their former status.

(i) Patents shall not be issued for sanitary landfill sites, unless it can be shown that when the usefulness of the lands for landfill purposes ends, the land shall be used for recreation or other public purposes as provided in the approved development plan. The land shall be leased until the sanitary landfill has been filled and the subsequent development has been completed.

(j) The act shall not be used to provide sites for the disposal of permanent or long-term hazardous wastes.

§ 2741.5 Applications for transfer or change of use.

(a) Applications under the act for permission to add to or change the use specified in a patent or applications to transfer title to a third party shall be filed as prescribed in § 2741.3 of this title.

(b) Applications for transfer of title are subject to the acreage limitations as prescribed in § 2741.6(a) of this title.

(c) Prior to approval of an application filed under this section, the public lands may be reappraised in accordance with § 2741.7 of this title and the beneficiary required to make such payments as are found justified by the reappraisal.

§ 2741.6 Acreage limitations and general conditions.

(a) Conveyances under the act to any applicant in any one calendar year shall be limited as follows:

(1) Any State or State agency having jurisdiction over the State park system may acquire not more than 6,400 acres for recreational purposes and such additional acreage as may be needed for small roadside parks and rest sites of 10 acres or less each.

(2) Any State or agency or instrumentality of such State may acquire not more than 640 acres for each of its programs involving public purposes other than recreation.

(3) Any politicial subdivision of a State may acquire for recreational purposes not more than 6,400 acres, and for public purposes other than recreation an additional 640 acres. In addition, any political subdivision of a State may acquire such additional acreage as may be needed for roadside parks and rest sites of not more than 10 acres each.

(4) If a State or political subdivision has failed in any one calendar year to receive 6,400 acres (not counting public lands for small roadside parks and rest sites) and had an application on file on the last day of that year, the State, State park agency or political subdivision may receive additional public lands to the extent that the conveyances would not have exceeded the limitations for that year.

(5) Any nonprofit corporation or nonprofit association may acquire for recreational purposes not more than 640 acres and for public purposes other than recreation an additional 640 acres.

(6) Acreage limitations described in this section do not apply to conveyances made under section 211 of the Federal Land Policy and Management Act of 1976.

(b) Conveyances within any State shall not exceed 25,600 acres for recreational purposes per calendar year, except that should any State park agency or political subdivision fail in one calendar year to receive 6,400 acres other than small roadside parks and rest sites, additional conveyances may be made thereafter to that State park agency or political subdivision pursuant to any application on file on the last day of said year to the extent that the conveyances would not have exceeded the limitations of said year.

(c) No patents shall be issued under the act unless and until the public lands are officially surveyed. This requirement does not apply to islands patented under the authority of section 211(a) of the Federal Land Policy and Management Act of 1976.

(d) All leases and patents issued under the act shall reserve to the United States all minerals together with the right to mine and remove the same under applicable laws and regulations to be established by the Secretary of the Interior.

§ 2741.7 Price.

(a) Conveyances for recreational or historic-monument purposes to a State, county, or other State or Federal instrumentality or political subdivision shall be issued without monetary consideration.

(b) All other conveyances shall be made at prices established by the Secretary of the Interior through appraisal or otherwise, taking into consideration the purpose for which the land is to be used.

(c) Patents shall be issued only after payment of the full purchase price by a patent applicant.

§ 2741.8 Patent provisions.

(a) All patents under the act shall provide that title shall revert upon a finding, after notice and opportunity for a hearing, that, without the approval of the authorized officer:

(1) The patentee or its approved successor attempts to transfer title to or control over the lands to another;

(2) The lands have been devoted to a use other than that for which the lands were conveyed;

(3) The lands have not been used for the purpose for which they were conveyed for a 5-year period; or

(4) The patentee has failed to follow the approved development plan or management plan.

(b) Patents shall also provide that the Secretary of the Interior may take action to revest title in the United States if the patentee directly or indirectly permits his agents, employees, contractors, or subcontractors (including without limitation lessees, sublessees, and permittees) to prohibit or restrict the use of any part of the patented lands or any of the facilities thereon by any person because of such person's race, creed, color, sex or national origin.

Subpart 2742—Recreation and Public Purposes Act: Omitted Lands and Unsurveyed Islands

AUTHORITY: Secs. 211 and 310, Federal Land Policy and Management Act of 1976 (43 U.S.C. 1721 and 1740).

SOURCE: 44 FR 41794, July 18, 1979, unless otherwise noted.

§ 2742.1 Qualifications of applicants.

States and their political subdivisions are qualified applicants.

§ 2742.2 Survey requirement.

(a) Islands.

(1) Survey is not necessary. However, unsurveyed islands shall be determined by the Secretary to be public lands of the United States.

(2) Islands shall be surveyed at the request of the applicant, as provided in Part 9185 of this chapter.

(b) Determination as to whether lands, other than islands, are public lands of the United States erroneously or fraudulently omitted from the original surveys shall be by survey. Surveys shall be in accordance with the requirements of Part 9185 of this title.

§ 2742.3 Conveyance limitations.

(a) No conveyances shall be made under this section until the relevant State government, local government, and areawide planning agency have notified the Secretary as to the consistency of such conveyance with applicable State and local government land use plans and programs.

(b) At least 60 days prior to offering for sale or otherwise conveying public lands under this section, the Secretary shall notify the Governor of the State within which such lands are located and the head of the governing body of any political subdivision of the State having zoning or other land-use regulatory jurisdiction in the geographical area within which such lands are located in order to afford the appropriate body the opportunity to zone or otherwise regulate change or amend existing zoning or other regulations concerning the use of such lands prior to such conveyance.

(c) Conveyances under this section may be made without regard to acreage limitations contained in the Recreation and Public Purposes Act.

§ 2742.4 Consistency with other laws.

The provision of the Recreation and Public Purposes Act prohibiting disposal for any use authorized under any other law does not apply to conveyances under this subpart.

PART 2760—TOWNSITES

Subparts 2760-2763—[Reserved]

Subpart 2764—Reclamation Projects

Sec.
2764.1 Procedure governing appraisement and sale.
2764.2 Installment payments.
2764.3 Reappraisement and sale of unsold lots.
2764.4 Public reserves; patents therefor.

Subpart 2765—Grant of Lands in Reclamation Townsites for School Purposes

2765.1 Application to be made by school district; action thereon.

AUTHORITY: The provision of this Subpart 2760 issued under R.S. 2478, R.S. 2380-2389, as amended, 2391-2394, secs. 1,3,4, 19 Stat. 392, as amended, sec. 16, 26 Stat. 1101, 26 Stat. 502, 32 Stat. 820; 43 U.S.C. 1201, 711-731, unless otherwise noted.

Subparts 2760–2763—[Reserved]

Subpart 2764—Reclamation Projects

SOURCE: 35 FR 9625, June 13, 1970, unless otherwise noted.

§ 2764.1 Procedure governing appraisement and sale.

The Commissioner of Reclamation shall from time to time, with the concurrence of the appropriate officer of the Bureau of Land Management, authorize the appraisement and sale of lots in reclamation townsites. Notices of sale will be issued and other actions taken by those officers in accordance with the townsite regulations contained in §§ 2760.0-3, 2761.1 and 2761.2.

§ 2764.2 Installment payments.

Under authority of section 2 of the Act of June 11, 1910 (36 Stat. 466; 43 U.S.C. 565), the order for sale may authorize the payment of the purchase price of lots, sold in townsites created under the laws in said act mentioned, to be made in annual installments.

§ 2764.3 Reappraisement and sale of unsold lots.

The Commissioner of Reclamation, with the concurrence of the authorized officer of the Bureau of Land Management, may direct that unsold lots shall be reappraised under the first section of the said Act of June 11, 1910 (36 Stat. 465; 43 U.S.C. 564). The lots to be reappraised will not, from the date of the order therefor, be subject to disposal until offered at public sale at the reappraised value.

§ 2764.4 Public reserves; patents therefor.

The public reservations in each town shall be improved and maintained by the town authorities at the expense of the town; and upon the organization thereof as a municipal corporation, said reservations shall be conveyed to such corporation in its corporate name, subject to the condition that they shall be used forever for public purposes. To secure such conveyances, the municipality shall apply through its proper officer for a patent to such reservations, and furnish proof in manner, form, and substance as required in § 2766.1.

Subpart 2765—Grant of Lands in Reclamation Townsites for School Purposes

§ 2765.1 Application to be made by school district; action thereon.

(a) At any time after the approval of the survey of any Government reclamation townsite and the subdivision thereof into town lots, with appropriate reservations for public purposes, a school district, in order to obtain title under the Act of October 31, 1919 (41 Stat. 326; 43 U.S.C. 570), should file through its proper officers, its application for patent to the unreserved, unappropriated, undisposed of lands it may desire, not exceeding 6 acres in area, therein, specifically describing the same by lot and block numbers, as delineated and designated on the approved townsite plat; submit sufficient and satisfactory reasons showing that the area applied for is needed for its use; that the land is unappropriated and subject to disposition under the Act, in order that the Department of the Interior may be fully advised that there is no adverse claim for the land applied for; and therewith furnish the certificate of the superintendent of public instruction, or other officer performing such function, having jurisdiction over the county in which the townsite is situate, showing that the district is a duly organized district under the laws of the State and entitled to hold real estate in its corporate name.

(b) The applicant must also procure and file with the application, at the time of the filing of the same or as early as practicable after the filing of such application, a statement by the official having charge of the project in which the land is located, showing that the disposal of the land applied for will not in any manner interfere with said project, such statement having been previously approved by the Commissioner of Reclamation.

(c) There is no limit to the number of applications which may be filed by a qualified school district, the only limitation being that the total acreage which may be patented to such a district shall not exceed 6 acres in area within any Government reclamation townsite situated within such school district. Whenever, therefore, more than one application is filed by the same applicant, such applicant should refer by serial number, to all previous applications filed by it.

(d) The application and proof must be filed in the proper office wherein the land applied for is situate, and if the authorizing officer thereof finds the same sufficient and if the Bureau of Reclamation makes favorable report upon the said application, the authorizing officer will issue certificate of entry, the same to provide that if any land so conveyed cease entirely to be used for school purposes title thereto shall revert to and revest in the United States.

[35 FR 9625, June 13, 1970]

PART 2780—SPECIAL AREAS

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Subpart 2781—Choctaw-Chickasaw

AUTHORITY: Sec. 1, 69 Stat. 445; 43 U.S.C. 1102.

SOURCE: 35 FR 9626, June 13, 1970, unless otherwise noted.

§ 2781.0-3 Authority.

(a) The Act of August 3, 1955 (69 Stat. 445), authorizes the Secretary of the Interior to provide for the management and disposition of any interest of the United States in those lands which were reconveyed to the United States by deeds of conveyance executed on November 29, 1950 by the principal chief of the Choctaw Nation and the Governor of the Chickasaw Nation or which have been or may be reconveyed to the United States by any further or supplemental conveyances made under the authority of the Interior Department Appropriation Act of June 28, 1944 (58 Stat. 463, 483), the joint resolution of June 24, 1948 (62 Stat. 596), and the First Deficiency Appropriation Act of May 24, 1949 (63 Stat. 76, 84). Such reconveyed lands are referred to in this Part as "Choctaw-Chickasaw lands" and the Act of August 3, 1955 is referred to as "the act".

(b) The Act of June 28, 1944 (58 Stat. 463, 483), declared the Choctaw-Chickasaw lands to be part of the public domain subject to the applicable public land mining and mineral leasing laws.

§ 2781.1 Disposal of surface fee.

Subject to the reservation of all rights of the United States to minerals in the lands and to the payment of the proportionate cost of any survey which may be necessary to describe properly any lands to be disposed of under the Act, Choctaw-Chickasaw lands are subject to disposal as follows:

(a) Private sale of tracts to any person having a legal or equitable interest therein under the regulations of § 2781.1-1.

(b) Private sales to occupants under the regulations of § 2781.1-2.

(c) Public sale of tracts and private sale of tracts unsold after offer at public auction, under the regulations of § 2781.1-2.

(d) Private sale of tracts under the provisions of the Act of June 4, 1954 (68 Stat. 173; 42 U.S.C. 869) and the regulations thereunder (Part 2740 of this chapter).

§ 2781.1-1 Sales to persons claiming a legal or equitable interest.

(a) Subparagraph 2(a)(2) of the Act authorizes the Secretary of the Interior to relinquish any tract of Choctaw-Chickasaw lands to any person having a legal or equitable interest therein.

(b) To qualify under subparagraph 2(a)(2) of the Act, a claim of legal or equitable interest must rest on uncertainty as to the title to the tract applied for, resulting from such things as inadequate surveys, judgments, decrees, or orders of condemnation in court proceedings in which the United States did not consent to be a party to the suit, or otherwise. No such claim will be recognized if it is based solely on a lease or permit from the Bureau of Land Management or its predecessors in interest to the lands.

(c) Any individual, group, or corporation which believes it has a legal or equitable interest in one or more tracts of Choctaw-Chickasaw lands may make an application therefor by filing, in duplicate, an application captioned "Claim of legal or equitable interest in Choctaw-Chickasaw lands" with the Authorizing officer of the proper office at Santa Fe, New Mexico. No particular form of application is required but it must be typewritten or in legible handwriting and signed by the applicant. Every application must be accompanied by a filing fee of $10 which will be nonreturnable. The application must contain a description of the land claimed sufficiently complete to identify the location, boundary, and area of the land and, if possible, the approximate description or location of the land by section, township, and range. It must contain the full name and full post-office address of the claimant. It must also contain a full statement showing the basis for the claim of legal or equitable interest in the lands. The applicant may be called upon to submit documentary or other evidence in support of his claim. Valuable documents submitted by the applicant will be returned to him.

(d) The applicant will be required to publish once a week for four consecutive weeks, at his expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file with the proper office at Santa Fe, New Mexico, their objections to the issuance of a relinquishment under the application. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service. The applicant must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication had been had for the required time.

(e) The land applied for will be appraised on the basis of its fair market value at the time of appraisal. However, in determination of the price payable by the applicant, value resulting from improvements by the applicant or his predecessors in interest will be deducted from the appraised price, and consideration will be given to the equities of the applicant. In no case will the land be sold for less than a total of $10.

(f) Applicants will be required to make payment of the sale price of the land and for the cost of survey, if any, within the time stated in the request for payment.

§ 2781.1-2 Sales to occupants.

(a) Subparagraph 2(b) of the Act authorizes the Secretary of the Interior, in selling any tract of Choctaw-Chickasaw lands, to grant a preference right of purchase to any occupant of the tract who has, or whose predecessors in interest have, lawfully and continuously occupied the tract for home, business, or school purposes since April 30, 1949, or earlier.

(b) Before offering any tract at public sale, the authorizing officer at Santa Fe, New Mexico, will give any such occupant an opportunity to purchase the tract at its fair market value as appraised by the authorized officer of the Bureau of Land Management. In the event the occupant elects to purchase the tract, he will be required to comply with the requirements of § 2781.1-1(d) and (f). In the event the occupant elects not to purchase the tract, the land office manager will give the occupant an appropriate period within which the occupant, in the occupant's discretion, may remove improvements on the tract constructed by him or his predecessors in interest or elect to receive compensation for such improvements from the successful purchaser of the tract in an amount equal to the appraised value of the improvements as determined by the authorized officer of the Bureau of Land Management.

§ 2781.1-3 Public and subsequent private sales.

(a) Subparagraph 2(a)(1) of the Act authorizes the Secretary of the Interior to sell tracts of Choctaw-Chickasaw lands at public sale to the highest responsible bidder, or at private sale.

(b) Upon request of any interested party or upon his own motion, the authorizing officer of the proper office at Santa Fe, New Mexico, may subject to the regulations in this part, expose to sale at public auction tracts of Choctaw-Chickasaw lands at not less than their fair market value as appraised by the authorized office of the Bureau of Land Management.

(c) The authorizing officer will cause a notice of sale to be published and posted consistent with the requirements of Subpart 2710 of this chapter. The successful purchaser of a tract will be required to reimburse the Government for the cost of publication of such notices, or if more than one successful purchaser is involved, the several purchasers will be required to pay their proportionate share of such costs determined on an acreage basis.

(d) The land will be offered for sale at public auction, at not less than its appraised value, at the time and place fixed in the public notice. Bids may be made by the principal or his agent, either personally at the sale or by mail. Bids sent by mail will be considered only if received at the place and prior to the hour fixed in the notice of the sale. Sealed bids must be accompanied by certified checks, post office money orders, bank drafts, or cashiers' checks for the amounts of the bids and must be enclosed in sealed envelopes which must be marked as prescribed in the notice of sale. In the event that two or more bids sent by mail are identical in amount, they will be considered in the award of the lands in the order of their receipt as shown by the hour and date noted on the envelope.

(e) At the close of bidding, owners in fee simple of lands contiguous to the offered tract, providing that they or their agents are present at the sale, will be granted a preference right of purchase by offering at the sale to meet the highest bid for such tract. In the event two or more preference claimants offer to meet the highest bid and in the absence of an agreement among them as to the award of the lands, the award will be determined through drawing.

(f) An awardee of a tract at public sale will be granted a reasonable time in which to pay the purchase price of the lands, the cost of publication, the cost of survey, if any, and the value of the improvements of the former occupant of the lands, if any, and if he is a preference claimant, to submit proof of his ownership in fee simple of lands adjoining the offered tract. Such proof must consist of (1) a certificate of the local recorder of deeds or an authorized abstracter, or (2) an abstract of title or a certificate of title prepared and certified by a title company or by an abstracting company, showing that the claimant owns adjoining land in fee simple at the date of the sale. After a case has been closed, the data filed pursuant to this section may be returned. In the event that the awardee does not submit within the time specified the amounts requested or the proof of ownership, the lands will be awarded under the same conditions to the drawee next in order, if any, or to the next highest bidder, if any.

(g) Lands remaining unsold after offer at public sale, for a period of one year after date of sale, will be available, at the discretion of the authorized officer of the Bureau of Land Management and at not less than the price at which they were appraised for the public sale, for purchase by the first qualified applicant who tenders to the Authorizing officer, Santa Fe Office, an amount equal to the price specified by the authorizing officer, the cost of publication, and if any, the cost of survey and the value of the improvements of the former occupant.

(h) Until a cash certificate has been issued, the authorized officer may at any time determine that the lands should not be sold, and no bidder or applicant for private sale shall have any contractual or other rights as against the United States, and no action taken will create any contractual right or obligation of the United States.

§ 2781.2 Leases and permits for nonmineral resources.

(a) Unless otherwise provided for by the regulations in this part, the Choctaw-Chickasaw lands will not be subject to lease or permit for the development and use of nonmineral resources except (1) where disposal of fee title to the tract, in the discretion of the authorized officer of the Bureau of Land

Management, is not in the public interest, (2) where the public interest will be served by the issuance of a lease or permit having a term of not to exceed one year, or (3) where the public interest will be served by the issuance of a lease under the regulations of Subpart 2232.

(b) Leases and permits issued under paragraph (a)(2) of this section, will be renewable in the discretion of the authorized officer of the Bureau of Land Management for periods not exceeding one year for each renewal.

(c) The authorized officer of the Bureau of Land Management, in his discretion, may specify the terms and conditions of leases and permits issued under paragraphs (a)(1) and (2) of this section consistent with the policies and procedures of the Department of the Interior.

(d) Except for applications to lease under the regulations of Part 2740, no particular form of application is required. The applicant, however, must describe the lands desired and the purpose for which he desires them. Every application must be accompanied by a filing fee of $10 which will not be returnable.

§ 2781.3 Deeds; disposition of minerals.

(a) All deeds for lands disposed of under the act of August 3, 1955 (69 Stat. 445), will contain a reservation to the United States of all its rights to mineral deposits in the lands, together with the right to prospect for, mine, and remove them. Any minerals subject to the public land leasing laws so reserved to the United States may be disposed of to any qualified person under applicable laws and regulations, subject to such conditions as the authorized officer of the Bureau of Land Management deems necessary for the protection of the surface and other nonmineral values of the lands. Until rules and regulations are issued, reserved minerals other than those subject to the public land leasing laws are not subject to disposition or, except by an authorized Federal agency, to prospecting.

(b) All minerals in the Choctaw-Chickasaw lands, subject to the exception and qualifications in paragraph (a) of this section, are subject to the applicable public land mining and mineral leasing laws and the regulations thereunder (see Groups 3100 and 3800 of this chapter).

(c) Deeds for Choctaw-Chickasaw lands disposed of under the regulations in this part will contain any provision the authorized officer of the Bureau of Land Management deems necessary in order to protect the rights of the holders of existing interests in the lands, or to permit access to any of the lands in which the Federal Government retains an interest.

§ 2781.4 Disposal of materials.

Materials on the Choctaw-Chickasaw lands, other than minerals subject to disposal under the public land mining and mineral leasing laws, are subject to disposal under the regulations of Parts 3600 and 5510 of this chapter.

§ 2781.5 Rights-of-way.

Easements and permits for rights-of-way over the Choctaw-Chickasaw lands may be secured under the regulations of Group 2800.

§ 2781.6 Contributions and donations of money, services, and property.

(a) Section 6 of the Act authorizes the Secretary of the Interior to accept contributions or donations of money, services and property to further the provisions of the act.

(b) Contributions and donations may be offered to the Authorizing officer of the proper office at Santa Fe, New Mexico.

(c) Amounts of money contributed in excess of their appropriate share of expenses as determined by the authorized officer of the Bureau of Land Management, will be refunded to contributors.

Subpart 2783—State Irrigation Districts

AUTHORITY: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

SOURCE: 35 FR 9628, June 13, 1970, unless otherwise noted.

§ 2783.0-3 Authority.

The act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621-630) empowers the Secretary of the Interior, following the presentation of proper applications, to investigate the plans and financial and physical resources of irrigation districts theretofore or thereafter organized pursuant to the law of any State, and if he shall find and conclude that any such applicant has planned and is executing an altogether meritorious and feasible irrigation undertaking, to grant his approval of its plan and undertaking, provided a majority of acreage thereof is not unentered land, to the end that upon such approval, and upon compliance by such districts with the conditions in said act specifically set forth, all unentered public land and land which has been entered, but upon which certificate has not issued, shall be subject to all the provisions of the laws of the State in which such lands shall be situated relating to the organization, government, and regulation of irrigation districts for the reclamation and irrigation of arid lands for agricultural purposes to the same extent and upon like terms as are privately owned lands within the district. This includes the right of the district to levy and collect taxes on unpatented land for the purpose of raising funds with a view to the construction, operation, and maintenance of the irrigation system, but does not grant the right to tax generally or for any purpose not definitely connected with the construction and maintenance of the irrigation works. The right of the district to sell lands which were entered at the date of the levy of any such lawful tax or assessment remaining unpaid is also provided for, together with the right of individuals to make entry of such land after the period of redemption from tax sales has expired.

§ 2783.1 Procedures.

§ 2783.1-1 Application by a district for approval.

Any irrigation district desiring to obtain the benefits of the act of August 11, 1916, should file in the proper office for the district within which the lands are situated an application, in duplicate, consisting of the following:

(a) A statement setting forth concisely the legal address of the district; the date when, by court decree or otherwise, it was finally declared to be fully organized; the name and title of all officers of the district qualified at the date of the filing of the application; the gross amount of land embraced in the district; the amount of irrigable land within the district; the amount of privately owned land within the district; the amount of entered land for which final certificate has not issued; the amount of unentered public land; the amount of land embraced within a withdrawal for a United States reclamation project; the amount of land otherwise withdrawn (within Indian, forest, power-site, or other withdrawal); how much (percent) of the project has been completed; what bond issue, if any, has been finally consummated, and the present bonded debt; whether contract has been made with the United States under the Reclamation act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 et seq.), or is pending, and if any such, the date thereof; and any other facts or circumstances which would throw light on or be pertinent to a full understanding of the present condition or future prospects of the district.

(b) Proof of organization.

(c) Evidence of water right and sufficiency of available water supply.

(d) Maps showing the project.

(e) Plans and specifications.

(f) Such data as may be necessary to a full understanding of the situation.

(g) All applications by State irrigation districts for approval under the act of August 11, 1916, must be accompanied by an application service fee of $10 which will not be returnable.

§ 2783.1-2 Proof of organization.

A properly authenticated copy in duplicate of the proceedings through which the district claims corporate existence should be filed. The character of this proof will, of course, depend upon the State statute under which the organization was effected.

§ 2783.1-3 Evidence of water right.

If the lands to be reclaimed are wholly withdrawn lands within a United States reclamation project, and the right to the use of the water depends solely upon an appropriation by the Government, no evidence of water right will be required; but if dependence is placed upon any water appropriation other than one claimed by the Government, either for the reclamation of the whole or a portion of the lands sought to be made subject to the act of August 11, 1916, certified copies of such instruments as will show title to the water rights claimed should be filed with the application. A statement as to whether the stream or other body of water from which the water supply is to be secured has been adjudicated, and if so, the court in which the decree was granted and the date thereof, should be given. If water measurements have not been taken, a detailed report showing the foundation for the belief that sufficient water exists should be filed.

§ 2783.1-4 Maps and details to be shown thereon.

(a) There should also be filed in duplicate with the application tracings showing by smallest legal subdivision, in accordance with the latest official survey, all of the lands embraced within the confines of the district; the status of the various tracts should be differentiated, by markings on each legal subdivision, in black India ink, letters corresponding to the status of the land, as follows:

(1) Privately owned land.

(2) Lands which have been entered but for which certificate has not been issued.

(3) Lands withdrawn under the Reclamation Act.

(4) Lands otherwise withdrawn.

(5) Unentered public lands.

NOTE: If a tract of land appears to come within two of the designations, both letters should be used.

(b) Unless one-eighth of any smallest legal subdivision is susceptible of reclamation from the irrigation system as planned or constructed, the district should not request its designation, except where it is shown that such irrigable area, where less than one-eighth of the subdivision, will when reclaimed be more valuable than the entire subdivision in its native state.

(c) These tracings should be made on tracing linen with India ink. Three scales are permissible: 2,000 feet to the inch, 1,000 feet to the inch, or 500 feet to the inch. No other scales should be used, and the scale most adaptable to a clear showing of the matters and things set forth thereon should be used, but in no case should any one tracing be over 36 inches in width.

(d) The tracings should also show the outlines, properly tied, of any reservoirs, canals, ditches, power plants, transmission lines, or other aids to reclamation which are included in the system as well as cross sections, properly drawn to scale, of dams and canals.

(e) If the irrigation system relied upon for the reclamation of the lands within the district is entirely a United States reclamation project, it will be unnecessary to furnish a map. See section 3 of the Act of May 15, 1922 (42 Stat. 542; 12 U.S.C. 773). If, however, public lands are to be reclaimed, in whole or in part, by means other than under a United States reclamation project, such system or the portion thereof not connected with the United States reclamation project should be shown by map.

§ 2783.1-5 Plans and specifications.

(a) If the district irrigation works have been constructed, either fully or partially, plans and specifications of the principal structures, sufficient to show the designs and methods of construction, prepared by a competent engineer, should be filed together with an authenticated statement of the amount actually expended upon the construction and the estimated amount necessary to complete the system.

(b) If no construction has been undertaken, preliminary plans showing the estimated cost of the project and the salient features thereof in sufficient detail to establish the feasibility of the project will be sufficient.

§ 2783.1-6 Complete data required.

As each project must necessarily stand or fall upon its own merits, it will be impossible to specify minutely all of the data that may be required. In every instance, however, the data should be so full and complete as to place before the authorized officer all of the information necessary to an intelligent consideration of the feasibility of the project as a whole. Additional information may be required if the data stated upon the original application prove insufficient.

§ 2783.1-7 Statements and certificates on maps.

Each of the maps filed with the application for recognition should bear the certificate of the president or other presiding or chief officer of the district, countersigned by the secretary, clerk, or other recording officer and attested by the seal of the district, in accordance with Form No. 1. (See Appendix A.) They should also bear the statement of the district's chief engineer, in accordance with Form No. 2. (See Appendix A.) This certificate and statement should be inscribed upon the maps in India ink.

§ 2783.1-8 Application for right-of-way.

If any unpatented public land or any reservation of the United States is affected by any of the proposed works of the irrigation district, application for right-of-way therefor must be filed by the district under the appropriate act before the application for recognition will be finally approved.

§ 2783.2 Lands included.

§ 2783.2-1 Identification of unsurveyed lands.

Where any proposed district includes within its confines unsurveyed lands, the lines of survey nearest such unsurveyed lands will be protracted.

§ 2783.2-2 Lands in more than one land district.

Where the lands within the confines of the proposed irrigation district lie within the jurisdiction of more than one proper office, it will only be necessary to file the data in duplicate in one of the proper offices; a blueprint copy of the map and one copy of the statement, however, should be filed in the other proper offices, together with a notice to the authorizing officer that the application, in duplicate, has been filed in the other proper office (naming it).

§ 2783.3 Requirements when lands are to be claimed by Bureau of Reclamation.

(a) Section 3 of the Act of May 15, 1922 (42 Stat. 542; 12 U.S.C. 773), provides as follows:

> That upon the execution of any contract between the United States and any irrigation district pursuant to this Act, the public lands included within such irrigation district when subject to entry, and entered lands within such irrigation district, for which no final certificates shall have been issued and which may be designated by the Secretary of the Interior in said contract, shall be subject to all the provisions of the Act entitled "An Act to promote the reclamation of arid lands," approved August 11, 1916: *Provided*, That no map or plan is required by section 3 of the said Act need be filed by the irrigation district for approval by the Secretary of the Interior.

(b) This section is construed as an amendment of the Act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621-630), in that it makes unnecessary the filing of a map or plan of the district for the approval of the Secretary of the Interior in those cases where the lands within a district are to be reclaimed by the Bureau of Reclamation under a contract between the Secretary of the Interior and the irrigation district entered into under the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof, and in lieu thereof provides for the designation by the terms of such contract of the public lands included in such a district where subject to entry and entered lands on which no final certificates shall have been issued, such designation to make the land subject to all the provisions of the act of August 11, 1916.

(c) Accordingly it will not be necessary for a district, under such circumstances, to file formal application for the designation of the land, as provided for in the Act of August 11, 1916, but in connection with its negotiations with the Secretary of the Interior for the construction of the irrigation system or for repayment of cost if already constructed, it should make request for the designation of the lands under the Act of August 11, 1916, filing a list thereof.

(d) In such a case the contract between the Secretary of the Interior and the irrigation district must contain a description according to the approved plats of survey of the lands within such district, properly subject to designation under said Act of August 11, 1916, and the approval of such a contract by the Secretary unless otherwise stipulated, will have the effect of designating the lands as provided for in said act and making them subject to all the provisions thereof.

(e) The Bureau of Reclamation will require the district to present a list of the land which it desires to have designated under the Act of August 11, 1916. From this list the Bureau of Reclamation will eliminate tracts which for any reason will not be irrigated (at least to such an extent as to make the irrigable portion more valuable than the whole tract when unreclaimed) by the system as constructed or to be constructed.

(f) These lists should then be referred by the Bureau of Reclamation to the Bureau of Land Management with a view to the elimination of any lands not subject to entry, whereupon the remaining tracts will be included in the contract between the district and the Secretary of the Interior.

(g) The Commissioner of the Bureau of Reclamation will furnish the Director of the Bureau of Land Management with two copies of all such contracts, together with two blue-print maps of the district.

§ 2783.4 Taxes and assessments.

(a) Where an irrigation district has been approved by the Secretary of the Interior the district must, after each assessment, file with the authorizing officer of the proper office for the district within which the lands of the irrigation district are situated, an officially certified list showing the amount assessed against each smallest legal subdivision of unentered or entered and unpatented public land within the district, which list shall contain a statement that such assessment was made in due form in compliance with the provisions of the State law and of this Act. Any assessment or sale, or attempted sale, of such lands prior to the approval of the district is without authority of law and void.

(b) Where contracts made between the United States and irrigation districts involving public lands of the United States inhibit the assessment of unentered public land while in that status, the provisions of such contracts must, of course, be complied with by the district.

§ 2783.5 Status of lands.

§ 2783.5–1 Status of lands within approved irrigation districts.

(a) For the purpose of entry, the Act of August 11, 1916 (39 Stat. 506; 43 U.S.C. 621–630), may be considered as dividing the unpatented lands within a State irrigation district into two general classes, namely, lands withdrawn under the act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 372 et seq.), and lands not so withdrawn.

(b) For the purpose of administration the lands within such a district may be considered as divided into the following subordinate classes:

(1) Unpatented public lands when subject to entry.

(2) Entered unpatented lands.

(3) Entered lands which shall become vacant by relinquishment or cancellation for any cause.

(c) The approval of a legally organized irrigation district by the Secretary of the Interior under said acts, unless otherwise provided by contract between the district and the United States, makes the public lands within such district, when subject to entry, and the entered lands on which no final certificates have issued, subject to a lien for all taxes and assessments thereafter lawfully levied by the district to the same extent and in the same manner as lands of a like character held under private ownership.

§ 2783.5–2 Entries under the Reclamation Act.

(a) Lands within an approved irrigation district withdrawn under the Act of June 17, 1902 (32 Stat. 388), shall during the continuance of such withdrawal be subject to entry only in the manner provided by said act, and amendments thereto and the regulations thereunder.

(b) When lands included in entries made under the Act of June 17, 1902, are sold for nonpayment of district taxes or assessments the purchaser on the presentation of proper evidence of his tax title shall be considered as one holding a complete and valid assignment under the Act of June 23, 1910 (36 Stat. 592; 43 U.S.C. 441), and shall perfect the entry in the same manner required of an assignee under said act.

(c) The evidence of such tax title shall be the same as hereinafter provided in the case of an applicant under tax title for land not subject to the Reclamation Act.

§ 2783.5-3 Entry of lands unentered when tax or assessment was levied; section 5, act of August 11, 1916.

(a) Public lands within an approved irrigation district which were unentered at the time any tax or assessment was levied against same shall not be sold for such tax or assessment, but same shall be and continue a lien upon such land, and not more than 160 acres of such land shall be entered by any one person, and when such land shall be applied for after the approval of the district by the Secretary of the Interior, under the homestead or desert-land laws, the applicant shall be required to present a certificate from the proper district or county officer showing that no unpaid district charges are due, or delinquent, against said land.

(b) Any such application for lands of this character, if unaccompanied by the required certificate, will be suspended for 30 days to enable the applicant to present such certificate, and if not furnished, the application will be rejected, subject to the right of appeal.

§ 2783.6 When tax title will not be recognized.

No application to enter or purchase land within an approved irrigation district under tax-sale title will be allowed if the sale was for taxes or assessments levied prior to the approval of the district by the Secretary of the Interior.

§ 2783.7 Reentry of land covered by canceled entries; section 6, Act of August 11, 1916.

(a) In case where any tract of entered land within an approved irrigation district shall become vacant by relinquishment or cancellation for any cause, any subsequent applicant therefor shall, in addition to the qualifications and requirements otherwise provided, be required to furnish satisfactory proof by certificate from the proper district or county officer showing that he has paid all charges due to the district upon said land, and also that he has paid to the proper district or county officer for the holder, or holders, of any tax certificate, delinquency certificate, or other proper evidence of tax sale, the amount for which said land was sold at tax sale, together with the interest and penalties thereon provided by law.

(b) Entries for such land will be limited to 160 acres, as such lands come within the general description of "unentered" lands.

(c) It will be observed that as to such land the requirement as to payment of taxes, assessments, interest, and penalties applies to any subsequent applicant therefor and not solely to applicants under the homestead and desert-land law as in the first instance.

(d) If the application is not accompanied by this evidence the authorizing officer will suspend same for 30 days, and if the necessary proof of the required payments is not made within such time he will reject the application, subject to the right of appeal.

(Sec. 5, 39 Stat. 508; 43 U.S.C. 627)

§ 2783.8 Cash entries; section 6, act of August 11, 1916.

(a) In case of entered lands within an approved irrigation district not subject to the Reclamation Act of June 17, 1902 (32 Stat. 388), the purchaser thereof at tax sale, or his assignee (no redemption having been made), may receive patent to the land upon the payment to the authorizing officer of the proper office of the minimum price of $1.25 per acre, or such other price as may be fixed by law for such land, together with the usual fees and commissions charged in entries of like land under the homestead laws, and upon satisfactory showing that the irrigation works have been constructed and that water of the district is available for such land.

(b) However, such purchaser or his assignee shall at the time of application for patent have the qualifications of either a homestead or desert-land entryman, and not more than 160 acres of such land shall be patented to any one purchaser.

(c) If the purchaser at tax sale, or his assignee, shall not within 90 days after the time for redemption has expired pay to the proper authorizing officer all fees and commissions and the purchase price to which the United States shall be entitled, as provided in this act, any person having the qualifications mentioned may pay to the proper authorizing officer for not more than 160 acres of such land the unpaid purchase price, fees, and commissions to which the United States may be entitled, and upon satisfactory proof that he has paid to the purchaser at tax sale, or to his assignee, or to the proper officer of the district for such purchaser, or for the district, as the case may be, the sum for which the land was sold at sale for irrigation district charges, or bid in by the district at such sale, and in addition thereto the interest and penalties on the amount bid at the rate allowed by law, shall be subrogated to the rights of such purchaser to receive patent for said land.

§ 2783.9 Application to purchase.

(a) An application to purchase under the Act of August 11, 1916, and the proofs required therewith must be signed by the applicant but need not be under oath.

(b) The application shall contain a description according to the approved plats of survey of the land sought to be purchased and shall give the serial number or numbers of the entry or entries in which the land is then included. The applicant shall also show by like evidence required in such cases that he has the qualifications of a homestead or desert-land entryman, furnishing the proof thereof.

(c) He must show whether he is applying as purchaser at tax sale, as assignee of such purchaser, or is seeking to be subrogated to the right of such purchaser or assignee.

(d) The application shall not embrace less than a legal subdivision or more than 160 acres and shall not include land in more than one land district and shall be accompanied by the usual fees and commissions provided in entries of like land under the homestead laws, together with the purchase price of the land, not less than $1.25 per acre, or such other price as may be fixed by law for such land.

(e) As the laws governing the sale of lands for taxes are not the same in the several States affected by this act, and as in some instances more than one method of conducting sales is permitted, and as the period in which redemption may be made varies, it is not thought advisable to formulate specific rules governing proof of tax titles. However, the following general rules must be observed:

(1) If the tax title is based on court proceedings a copy of the decree or order of the court under the seal of the clerk of the court must be furnished. The certificate of the clerk of court should make specific reference to the laws governing such sale and show that the period of redemption has expired without redemption having been made, citing the statute.

(2) If the sale was made by the district or under other than court proceedings the certificate of the officer conducting such sale, under the seal of his office, must be furnished. This certificate should show that all steps necessary to legalize such sale were taken, citing the statutes, and should show that the period of redemption has expired without redemption being made.

(3) No application to purchase under this act will be accepted for lands included in more than one pending entry unless necessary in order to make the 160 acres maximum area to which the applicant may be entitled, but in such event the land applied for must, if practicable, be contiguous, and if not contiguous, as nearly so as the circumstances will permit.

(4) If the application is not complete in substance, or based on an unredeemable tax title, the authorizing officer will hold same for rejection, subject to the usual right of appeal. If the application is found satisfactory and complete in all respects he will notify the entryman or entrymen, of the land affected and alleged to have been sold at tax sale, of the filing of the application to purchase such land, and that because thereof the entry, or entries are held for cancellation (to the extent affected by such sale) subject to the usual right of appeal.

(5) If the application is without objection and contains the evidence herein required and water has been made available for the land, certificate will be issued by the authorizing officer. If an appeal is filed, the same will be considered and disposed of in the usual manner.

(6) If all be found regular and sufficient, except that the irrigation works have not been constructed and water has not been made available, the certificate will be withheld pending proof of construction and of the availability of water.

(7) When the application to purchase is approved, and, without regard to whether or not such purchaser shall then be entitled to certificate and patent (which will depend upon the question of construction of irrigation works and the availability of water), the conflicting entry, or entries, as the case may be, to the extent to which the land was sold for delinquent taxes or assessments, no appeal having been filed, will be canceled of record.

APPENDIX A

FORM 1

I, ———, the duly elected, qualified, and acting ——— (designation of office) of the ——— irrigation district, duly organized under the laws of the State of ——— as found at page ——— of ———,[1] do hereby certify that the plan of irrigation and survey herewith is submitted under authority of the said district granted by resolution of the board of directors (or trustees) of said district, adopted on the ——— day of ———, 19—, a copy of which said resolution, duly verified by the secretary of said district, is submitted with, and by this reference made a part of, this certificate; and application is hereby made for the designation, under the Act of August 11, 1916 (39 Stat. 506), of the tracts marked hereon "b" or "e"; that the said tracts are each and every one of such character as to be subject to the provisions of the homestead or desert land laws of the United States and that the majority acreage in the said irrigation district is not unentered land.

———————————
(Name)

———————————
(Official title)

Of the ——— *Irrigation District.*

Attest:
[SEAL]

———————————————————
(Secretary (or other title of recording officer)

FORM 2

STATE OF ———
County of ———, ss:

———, being duly sworn, says that he is the chief engineer of the ——— irrigation district; that the tracts shown hereon to be designated under the Act of August 11, 1916 (39 Stat. 506), are each and every one of such character as to be subject to the provisions of the homestead or desert land laws of the United States;[2] that he has personally examined the same; that there is not to his knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, nor, within such limits, any placer, nor cement, gravel, salt spring, or deposit of salt, nor any other valuable mineral deposit (if necessary insert: except mineral deposits within the purview of the Acts of March 3, 1909 (35 Stat. 844), and June 22, 1910 (36 Stat. 583), or of the Act of July 17, 1914 (38 Stat. 509), as the facts may warrant); that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially nonmineral land (exception as above if necessary); that none of the unentered lands contain springs or water holes (see withdrawal of April 17, 1926, also Circular No. 1066, approved May 25, 1926, 51 L.D. 457); that the plan of irrigation herewith submitted is accurately and fully represented in accordance with ascertained facts; that the system proposed is sufficient to thoroughly irrigate and reclaim said land and prepare it to raise ordinary agricultural crops, as is shown in the accompanying report; that at least one-eighth of each smallest legal subdivision for which designation is sought is susceptible of reclamation from the irrigation system or (where less than one-eighth the irrigable portion of such tract) will be of more value when reclaimed than the entire tract in its native state; that the survey of said system of irrigation is accurately represented upon this map and the accompanying field notes; and that the limits of said irrigation district are correctly shown hereon.

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[1] Give citation to act or acts under which the district is organized.

[2] If the chief engineer has not made a personal examination of the land sufficiently in detail to enable him to make that part of the affidavit bracketed, it should be omitted herefrom and a separate affidavit should be made on the map as to such facts by some person who has made such examination.

Subscribed and sworn to before me this ------ day of ------, 19—.

[SEAL]

(Notary Public)

My commission expires------.

Subpart 2784—Arkansas Drainage

AUTHORITY: R.S. 2478; 43 U.S.C. 1201.

SOURCE: 35 FR 9631, June 13, 1970, unless otherwise noted.

§ 2784.0-3 Authority.

(a) The Act of January 17, 1920 (41 Stat. 392; 43 U.S.C. 1041-1048) provides that all those unentered, unreserved public lands and all those entered for which no certificates have been issued, in certain townships in Arkansas, are made subject to the laws of the State of Arkansas relating to organization, government and regulation of drainage districts to the same extent and in the same manner except as otherwise provided, in which lands held under private ownership are subject to such laws, provided that the United States and all persons legally holding unpatented lands under public land laws shall be accorded all the rights, privileges and benefits given by said laws to persons holding lands in private ownership. The said act contains special provisions governing the disposal of such lands by the United States. The Act of February 28, 1929 (45 Stat. 1410), amended the act of January 17, 1920, and gave consent of the United States to the levy of special assessments within the Saint Francis Levee District in Arkansas on lands of the United States, subject to the conditions hereinafter set forth.

(b) Sections 1, 2, and 3 of the Act of February 28, 1929, impose no duties on the Department of the Interior nor do they require any change in the matter of entry, proof, payment, or patent. The proviso to section 1 excludes Government land, entered or unentered, from levy, assessment, or tax until the date an entryman or purchaser thereof has earned the right to a patent. If and when equitable title to any particular tract shall have passed from the Government of the United States to an entryman or purchaser, the levy, special assessment, or tax to which consent was given will become effective.

(c) Section 4, however, provides for the purchase after foreclosure by any drainage district in Tps. 14, 15, 16 N., R. 9 E., and Tps. 15, 16 N., R. 10 E., 5th P. M., in Mississippi County, and in Tps. 11 and 12 N., R. 6 E., in Poinsett County, Ark., and does not apply to the balance of the lands in the St. Francis Levee district. It is in effect an amendment of the Act of January 17, 1920 (41 Stat. 392), which expressly prohibited the issuance of patent to a drainage district for lands bid in by it.

NOTE: Public land withdrawn by Executive Order 6964 of February 5, 1935 is not subject to entry until it has been classified therefor. See Group 2450 of this chapter.

§ 2784.0-8 Land subject to State drainage laws.

(a) *Public lands in certain townships made subject to State drainage laws.* All unentered, unreserved public lands in the townships described in § 2784.0-3, in the State of Arkansas which are subject to entry, and entered lands for which no final certificates have issued, are by the Act of January 17, 1920 (41 Stat. 392; 43 U.S.C. 1041-1048), as amended by the act of February 28, 1929, made subject to the State drainage laws to the same extent and in the same manner except as noted in §§ 2784.7-1 to 2784.9 in which lands of like character held in private ownership are or may be subject to said laws.

(b) *Lands subject to homestead and cash entry after 90 days from sale by State.* After the expiration of 90 days from the date of sale by the State for drainage charges the unentered lands will be subject to ordinary homestead entry, in which case residence, improvement, and cultivation are required, or to entry under the Act of January 17, 1920, which does not require such compliance with the homestead law. The drainage charges and expenses incident to sale will become a lien on the land which can be enforced by the State after patent issues.

§ 2784.1 Qualification of purchasers; tracts purchased need not be contiguous.

A purchaser (other than an improvement or drainage district) of land from the Government under the Act of January 17, 1920, is required to have the qualifications of a homestead entryman which must be shown by his signed statement. Any purchaser hereunder shall exhaust his homestead right to the extent of the amount of lands purchased by him, and not more than 160 acres can be sold to any one purchaser. The tracts must be entered by legal subdivisions, but they need not be contiguous or in one body.

§ 2784.2 State charges; enforcement.

§ 2784.2-1 Report on assessments.

Certified lists showing the amount of the charges assessed against each smallest legal subdivision should be furnished by the county officers to the Bureau of Land Management as soon as the charges would become a lien on the land if in private ownership. Such office will compare said lists with its records and if any charges are assessed against land which is not subject to the State drainage laws, it will promptly notify the county auditor thereof, and advise him that the lands are not subject to sale thereunder.

§ 2784.2-2 Enforcement of lien by State sales; State report on sales.

(a) The charges against the Government lands subject thereto may, under section 3 of the Act of January 17, 1920 (41 Stat. 393; 43 U.S.C. 1043), be enforced by a sale of the lands by the State in the same manner and under the same proceedings as such charges would be enforced against lands held in private ownership.

(b) Immediately after the close of the sale, the State officials should furnish the Bureau of Land Management with a statement showing the name of the purchaser of each tract, including land bid in for a drainage district, the price at which each legal subdivision was sold, the amount assessed against it, the penalties and interest, the cost of the sale, and the amount of excess, if any, over and above all lawful assessment charges and the cost of sale. No entries will be allowed under said act until this requirement has been complied with.

(c) When such statement has been filed in the said office, proper notations thereof will be made on the records.

§ 2784.2-3 Cash entries by purchasers at State sale.

Section 5 of the Act of January 17, 1920 (41 Stat. 393; 43 U.S.C. 1045), provides that purchasers of unentered lands at such sales by the State have 90 days from the date of sale and purchasers of entered but unpatented lands have 90 days from the expiration of the period of redemption provided for in the drainage laws under which the lands were sold, no redemption having been made within which to pay $5 per acre, together with the usual fees and commissions both original and final, charged in entry of lands under the homestead laws, and make entry. The required payments and application for entry must be filed in the proper office (see § 1821.2-1 of this chapter).

§ 2784.2-4 Cash entries by persons subrogated to rights of persons at State sale.

Unless the purchaser of unentered lands at the sale by the State files application for a patent and pays the required amounts, within the time specified in section 5 of the Act of January 17, 1920 (41 Stat. 393; 43 U.S.C. 1045), any other qualified person may make application for a patent and file a statement of qualifications and pay to the Bureau of Land Management the unpaid fees, commissions, and purchase price and in addition an amount equal to the drainage charges, penalties, interest, and costs for which the land was sold, and if the lands were bid in for the drainage district, an additional amount equal to 6 percent per annum on the sum for which the lands were sold from the date of sale and shall become subrogated to the rights of such purchaser and shall be entitled to receive a patent for not more than 160 acres of said lands.

§ 2784.2-5 Procedure when payment is made to effect subrogation.

When payment is made to effect subrogation as provided in § 2784.2-4, the Bureau of Land Management shall serve notice upon the purchased at the sale that an application for patent for the lands purchased by him has been filed and that the amount of the drainage charges, penalties, interests, and costs of the sale will be paid to him upon submission of proof of purchase and payment of said sums. The Bureau of Land Management shall make such payment as soon as said requirement shall have been fulfilled. If the lands were bid in for a drainage or improvement district, the said office will make such payments to the proper county officers.

§ 2784.2-6 Purchase of lands by drainage district.

Section 5 of the Act of January 17, 1920 (41 Stat. 393; 43 U.S.C. 1045), permits the bidding in of lands for a drainage district. Section 4 of the Act of February 28, 1929, (45 Stat. 1411) provides that in case of the foreclosure of the liens of any improvement or drainage district, and the lands have been purchased by said district, said improvement or drainage district may, upon proof of the sale and purchase and payment of $5 per acre, together with the usual fees and commissions charged entry of lands under the homestead laws, where such payment has not heretofore been made, receive a patent for the land. In case of unentered land, a preference right exists for 90 days from date of sale. In case of entered lands, the preference-right period is for 90 days from the expiration of the period of redemption. The drainage or improvement district may exercise the right of purchase after the period mentioned in the absence of an adverse claim. No limitation is placed on the amount of land an improvement or drainage district may enter under the act.

§ 2784.3 Proof of foreclosure required and cancellation of entry.

(a) Proof of the foreclosure of the land and of the failure of the entryman to redeem the lands in accordance with State statutes relating to the taxation of lands in private ownership in Arkansas must be furnished under the certificate and seal of the officer of the State declaring the foreclosure. Said certificate should be presented to the Bureau of Land Management, whereupon, should no objection appear, the said office will cancel the entry upon its records, as of the date of the receipt of said certificate, and note such cancellation with proper reference to the entry on the certificate. For 90 days after the expiration of the period of redemption provided by the Arkansas laws the purchaser at the sale, including the improvement district, if bid in by the district, may furnish the certificate mentioned, make entry of the lands, and receive patent in his or its own name. Should such purchaser or district fail to make entry within the 90-day period mentioned, any other person, upon furnishing said certificate, may secure the cancellation of the entry and make entry.

(b) Sections 2784.2-4 and 2784.2-5 of this part should be observed in allowing purchases of entered land.

§ 2784.4 Cash entry on relinquishment of homestead entry before expiration of period of redemption.

If a homestead entry, after the land covered thereby has been sold for delinquent taxes, should be subsequently relinquished or canceled prior to the expiration of the period of redemption, the purchaser at the tax sale, if the taxes have not been redeemed, will have the preference right for 30 days, after due notice of the cancellation or relinquishment of the entry, to file an application to purchase the land without having to wait until the expiration of the period of redemption. Such right is given to the actual purchaser only if the land has not been redeemed. This right to purchase is not given to the homestead entryman who allowed the land to be sold for taxes and then relinquished the same.

§ 2784.5 Excess charges to be deposited in U.S. Treasury.

In the sale of lands by the State, should there be paid any excess over and above the drainage charges due, the excess amount shall be paid to the Bureau of Land Management for deposit in accordance with sections 3 and 4 of the Act of January 17, 1920 (41 Stat. 393; 43 U.S.C. 1043, 1044), before patent is issued.

§ 2784.6 When settlers and entrymen are not entitled to right of redemption.

To avoid confusion, misunderstanding, and conflict of rights no right of redemption, referred to in section 5 of the Act of January 17, 1920 (41 Stat. 393; 43 U.S.C. 1045) can be acquired by settlement on or application for unentered lands after the hour and date fixed for their sale. The Bureau of Land Management will suspend all applications for such lands advertised for sale under said Act received on or subsequent to the date of sale until after the statement of sale provided in section 4 of the Act is received, unless the applicant shall show by a statement, duly corroborated, that he settled on the land in good faith prior to the beginning of the sale, for the purpose of securing a home and not for the purpose of defeating the rights of a purchaser at the sale. If the statement referred to shows that the land was actually sold at the sale in question, the application in question will remain suspended until after the expiration of 90 days from the date of sale to give the purchaser an opportunity to make entry for the land. Should the purchaser not make entry the homestead application may then be allowed. If the statement does not show a sale of the land, or it was bid in by the drainage district, the homestead application may be allowed, and the homestead entryman will be required to comply with the homestead laws in the matter of residence, improvements, and cultivation.

§ 2784.7 Payment of drainage charges not required to make entry in homestead cases.

Payment of the drainage charges will not be required, and each applicant making a 3-year homestead entry where the land has been sold for delinquent drainage charges and evidence of redemption has not been furnished will be formally notified by the Bureau of Land Management of the amount of taxes assessed against said land, and of any tax certificates outstanding thereon, as shown by the records of such office.

§ 2784.8 Evidence of redemption required in connection with cash entries.

The Bureau of Land Management will reject all applications for cash entries under the acts of January 17, 1920, and February 28, 1929, where evidence of redemption is required if the same is not filed in connection therewith.

§ 2784.9 Issuance of cash certificates; receipts and patents.

In case payment is made in purchases under the Acts of January 17, 1920, and February 28, 1929, and evidence is furnished showing the qualifications of the purchaser, the usual cash certificates and receipts will be issued by the Bureau of Land Management, and should no objection appear patent will issue in due course of business.

Group 2800—Use; Rights-of-Way

PART 2800—RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES

Subpart 2800—Rights-of-Way; General

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AUTHORITY: 43 U.S.C. 1761-1771.

SOURCE: 45 FR 44526, July 1, 1980, unless otherwise noted.

Subpart 2800—Rights-of-Way; General

§ 2800.0-1 Purpose.

The purpose of the regulations in this part is to establish procedures for the orderly and timely processing of applications, grants, permits, amendments, assignments and terminations for rights-of-way and permits over, upon, under or through public lands pursuant to title V, Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761-1771).

§ 2800.0-2 Objectives

It is the objective of the Secretary of the Interior to grant rights-of-way and temporary use permits, covered by the regulations in this part, to any qualified individual, business entity, or governmental entity and to regulate, control and direct the use of said rights-of-way on public land so as to:

(a) Protect the natural resources associated with the public lands and adjacent private or other lands administered by a government agency.

(b) Prevent unnecessary or undue environmental damage to the lands and resources.

(c) Promote the utilization of rights-of-way in common with respect to engineering and technological compatibility, national security and land use plans.

(d) Coordinate, to the fullest extent possible, all actions taken pursuant to this part with State and local governments, interested individuals and appropriate quasi-public entities.

§ 2800.0-3 Authority.

The regulations for this subpart are issued under title V of the Federal Land Policy and Management Act of 1976.

§ 2800.0-5 Definitions.

As used in this part, the term:

(a) "Act" means the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1701 et seq.).

(b) "Secretary" means the Secretary of the Interior.

(c) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part.

(d) "Public lands" means any lands or interest in land owned by the United States and administered by the Secretary through the Bureau of Land Management, without regard to how the United States acquired ownership, except: (1) Lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(e) "Applicant" means any qualified individual, partnership, corporation, association or other business entity, and any Federal, State or local governmental entity including municipal corporations which applies for a right-of-way grant or a temporary use permit.

(f) "Holder" means any applicant who has received a right-of-way grant or temporary use permit.

(g) "Right-of-way" means the public lands authorized to be used or occupied pursuant to a right-of-way grant.

(h) "Right-of-way grant" means an instrument issued pursuant to title V of the act authorizing the use of a right-of-way over, upon, under or through public lands for construction, operation, maintenance and termination of a project.

(i) "Temporary use permit" means a revocable non-possessory, non-exclusive privilege, authorizing temporary use of public lands in connection with construction, operation, maintenance, or termination of a project.

(j) "Facilities" means improvements constructed or to be constructed or used within a right-of-way pursuant to a right-of-way grant.

(k) "Project" means the transportation or other system for which the right-of-way is authorized.

(l) "Right-of-way corridor" means a parcel of land either linear or areal in character that has been identified, by law, Secretarial Order, through the land use planning process or other management decision process as being suitable to accommodate more than one type of right-of-way or one or more rights-of-way which are similar, identical, or compatible.

(m) "Casual use" means activities that involve practices which do not ordinarily cause any appreciable disturbance or damage to the public lands, resources or improvements and, therefore, do not require a right-of-way grant or temporary use permit under this title.

§ 2800.0-7 Scope.

This part sets forth regulations governing:

(a) Issuing, amending or renewing right-of-way grants for necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under or through public lands, including but not limited to:

(1) Reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels and other facilities and systems for the impoundment, storage, transportation or distribution of water;

(2) Pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;

(3) Pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) Systems for generation, transmission and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Energy Regulatory Commission under the Federal Power Act of 1935 (16 U.S.C. 791);

(5) Systems for transmission or reception of radio, television, telephone, telegraph and other electronic signals, and other means of communication;

(6) Roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreation facilities on lands in the National Forest System;

(7) Such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under or through such lands; or

(8) Rights-of-way to any Federal department or agency for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any product produced therefrom.

(b) Temporary use of additional public lands for such purposes as the Secretary determines to be reasonably necessary for construction, operation, maintenance or termination of rights-of-way, or for access to the project or a portion of the project.

(c) However, the regulations contained in this part do not cover right-of-way grants for: Federal Aid Highways, roads constructed or used pursuant to cost share or reciprocal road use agreements, wilderness areas, and oil, gas and petroleum products pipelines except as provided for in § 2800.0-7(a)(8) of this title.

Subpart 2801—Terms and Conditions of Rights-of-Way Grants and Temporary Use Permits

§ 2801.1 Nature of interest.

§ 2801.1-1 Nature of right-of-way interest.

(a) All rights in public lands subject to a right-of-way grant or temporary use permit not expressly granted are retained and may be exercised by the United States. These rights include, but are not limited to:

(1) A continuing right of access onto the public lands covered by the right-of-way grant or temporary use permit, and upon reasonable notice to the holder, access and entry to any facility constructed on the right-of-way or permit area:

(2) The right to require common use of the right-of-way, and the right to authorize use of the right-of-way for compatible uses (including the subsurface and air space).

(b) A right-of-way grant or temporary use permit may be used only for the purposes specified in the authorization. The holder may allow others to use the land as his/her agent in exercising the rights granted.

(c) All right-of-way grants and temporary use permits shall be issued subject to valid existing rights.

(d) A right-of-way grant or temporary use permit shall not give or authorize the holder to take from the public lands any mineral or vegetative material, including timber, without securing authorization under the Materials Act (30 U.S.C. 601 et seq.), and paying in advance the fair market value of the material cut, removed, used, or destroyed. However, common varieties of stone and soil necessarily removed in the construction of a project may be used elsewhere along the same right-of-way or permit area in the construction of the project without additional authorization and payment. The holder shall be allowed in the performance of normal maintenance to do minor trimming, pruning and clearing of vegetative material within the right-of-way or permit area and around facilities constructed thereon without additional authorization and payments. At his discretion and when it is in the public interest, the authorized officer may in lieu of requiring an advance payment for any mineral or vegetative materials, including timber, cut or excavated, require the holder to stockpile or stack the material as designated locations for later disposal by the United States.

(e) A holder of a right-of-way grant or temporary use permit may assign a grant or permit to another, provided the holder obtains the written approval of the authorized officer.

(f) The holder of a right-of-way grant may authorize other parties to use a facility constructed, except for roads, on the right-of-way with the prior written consent of the authorized officer and charge for such use. In any such arrangement, the holder shall continue to be responsible for compliance with all conditions of the grant. This paragraph does not limit in any way the authority of the authorized officer to issue additional right-of-way grants or temporary use permits for compatible uses on or adjacent to the right-of-way, nor does it authorize the holder to impose charges for the use of lands made subject to such additional right-of-way grants or temporary use permits.

(g) Each right-of-way grant or temporary use permit shall describe the public lands to be used or occupied and the grant or permit shall be limited to those lands which the authorized officer determines:

(1) Will be occupied by the facilities authorized;

(2) To be necessary for the construction, operation, maintenance, and termination of the authorized facilities;

(3) To be necessary to protect the public health and safety; and

(4) Will do no unnecessary damage to the environment.

(h) Each grant or permit shall specify its term. The term of the grant shall be limited to a reasonable period. A reasonable period for a right-of-way grant may range from a month to a year or a term of years to perpetuity. The term for a temporary use shall not exceed 3 years. In determining the period for any specific grant or permit, the authorized officer shall provide for a term no longer than is necessary to accomplish the purpose of the authorization. Factors to be considered by the authorized officer for the purpose of establishing an equitable term pertaining to the use include, but are not limited to:

(1) Land use plans and other management decisions;

(2) Public benefits provided;

(3) Cost and useful life of the facility;

(4) Project financing; and

(5) Time limitations imposed by required licenses or permits that the holder is required to secure from other Federal or State agencies; and

(6) Any other limitations imposed by Federal or State law on the holder which would indicate that the right-of-way grant not be limited to a term of years.

(i) Each grant issued for a term of 20 years or more shall contain a provision requiring periodic review of the grant at the end of the twentieth year and at regular intervals thereafter not to exceed 10 years.

(j) Each grant shall have a provision stating whether it is renewable or not and if renewable, the terms and conditions applicable to the renewal.

(k) Each grant shall not only comply with the regulations of this part, but also, comply with the provisions of any other applicable law and implementing regulations as appropriate.

§ 2801.1-2 Reciprocal grants.

When the authorized officer determines from an analysis of land use plans or other management decisions that a right-of-way for an access road is or shall be needed by the United States across lands directly or indirectly owned or controlled by an applicant for a right-of-way grant, he or she shall, if it is determined to be in the public interest, require the applicant, as a condition to receiving a right-of-way grant, to grant the United States an equivalent right-of-way that is adequate in duration and rights.

§ 2801.2 Terms and conditions of interest granted.

(a) An applicant by accepting a right-of-way grant, temporary use permit, assignment, amendment or renewal agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case:

(1) To the extent practicable, all State and Federal laws applicable to the authorized use and such additional State and Federal laws, along with the implementing regulations, that may be enacted and issued during the term of the grant or permit.

(2) That in the construction, operation, maintenance and termination of the authorized use, there shall be no discrimination against any employee or applicant for employment because of race, creed, color, sex or national origin and all subcontracts shall include an identical provision.

(3) To rebuild and repair roads, fences, and established trails that may be destroyed or damaged by construction, operation or maintenance of the project and to build and maintain suitable crossings for existing roads and significant trails that intersect the project.

(4) To do everything reasonably within his or her power, both independently and upon request of the authorized officer, to prevent and suppress fires on or in the immediate vicinity of the right-of-way or permit area. This includes making available such construction and maintenance forces as may be reasonably obtained for the suppression of fires.

(b) All right-of-way grants and temporary use permits issued, renewed, amended or assigned under these regulations shall contain such terms, conditions, and stipulations as may be required by the authorized officer regarding extent, duration, survey, location, construction, operation, maintenance, use and termination. The authorized officer shall impose stipulations which shall include, but shall not be limited to:

(1) Requirements for restoration, revegetation and curtailment of erosion of the surface of the land, or any other rehabilitation measure determined necessary;

(2) Requirements to ensure that activities in connection with the grant or permit shall not violate applicable air and water quality standards or related facility siting standards established by or pursuant to applicable Federal or State law;

(3) Requirements designed to control or prevent damage to scenic, esthetic, cultural and environmental values (including damage to fish and wildlife habitat), damage to Federal property and hazards to public health and safety;

(4) Requirements to protect the interests of individuals living in the general area who rely on the fish, wildlife and biotic resources of the area for subsistence purposes;

(5) Requirements to ensure that the facilities to be constructed, used and operated on the prescribed location are maintained and operated in a manner consistent with the grant or permit; and

(6) Requirements for compliance with State standards for public health and safety, environmental protection and siting, construction, operation and maintenance when those standards are more stringent than Federal standards.

§ 2801.3 Unauthorized occupancy.

Any occupancy or use of the public lands, other than casual use as set forth in §§ 2800.0-5(m) and 2802.1(d) of this title, without authorization shall be considered a trespass and shall subject the trespasser to prosecution and liability for the trespass. Issuance of a right-of-way grant or temporary use permit to a trespasser shall be made in accordance with § 9239.0-9 of this title, except for those unauthorized uses under § 2802.5 of this title. This provision applies to all unauthorized use of the public lands and precludes the issuance of a right-of-way grant or temporary use permit until the trespass case has been settled. Once the trespass case has been settled, a new grant or permit may be made by the authorized officer in accordance with the procedures set forth in this part.

Subpart 2802—Applications

§ 2802.1 Preapplication activity.

(a) Anyone interested in obtaining a right-of-way grant or temporary use permit involving use of public lands is encouraged to establish early contact with the Bureau of Land Management office responsible for management of the affected public lands so that potential constraints may be identified, the proposal may be considered in land use plans, and processing of an application may be tentatively scheduled. The appropriate officer shall furnish the proponent with guidance and information about:

(1) Possible land use conflicts as identified by review of land use plans, land ownership records and other available information sources;

(2) Application procedures and probable time requirements;

(3) Applicant qualifications;

(4) Cost reimbursement requirements;

(5) Associated clearances, permits and licenses which may be required in addition to, but not in place of the grants or permits required under these regulations;

(6) Environmental and management considerations;

(7) Any other special conditions that can be identified;

(8) Identification of on-the-ground investigations which may be required in order to complete the application; and

(9) Coordination with Federal, State and local government agencies.

(b) Any information furnished by the proponent in connection with a preapplication activity or use which he/she requests not be disclosed, shall be protected to the extent consistent with the Freedom of Information Act (5 U.S.C. 552).

(c) No right-of-way applications processing work, other than that incurred in the processing of applications for permits for temporary use of public lands in furtherance of the filing of an application and pre-application guidance under paragraph (a) of this section, shall be undertaken by the authorized officer prior to the filing of an application together with advance payment as required by § 2803.1-1 of this title. Such processing work includes, but is not limited to, special studies such as environmental analyses, environmental statements, engineering surveys, resource inventories and detailed land use or record analyses.

(d) The prospective applicant is authorized to go upon the public lands to perform casual acts related to data collection necessary for the filing of an acceptable application. These casual acts or activities include, but are not limited to: (1) Vehicle use on existing roads; (2) sampling; (3) marking of routes or sites, including surveying; or (4) other activities that do not unduly disturb the surface or require the removal of vegetation.

If, however, the authorized officer determines that appreciable surface or vegetative disturbance will occur or is a real possibility he shall issue a temporary use permit with appropriate terms, conditions, and special stipulations pursuant to § 2801.2 of this title.

(e) When, during pre-application discussions with the prospective applicant, the authorized officer supplies the prospective applicant with information set out in paragraph (a) of this section, the authorized officer shall also inform appropriate Federal, State and local government agencies that preapplication discussions have begun in order to assure that effective coordination between the prospective applicant and all responsible government agencies is initiated as soon as possible.

§ 2802.2 Application filing activity.

§ 2802.2-1 Application filing.

Applications for a right-of-way grant or temporary use permit shall be filed with either the Area Manager, the District Manager or the State Director having jurisdiction over the affected public lands except:

(a) Applications for Federal Aid Highways shall be filed pursuant to 23 U.S.C. 107, 317, as set out in 43 CFR 2821;

(b) Applications for cost-share roads shall be filed pursuant to 43 CFR 2812;

(c) Applications for oil and gas pipelines shall be filed pursuant to 43 CFR 2880; and

(d) Applications for projects on lands under the jurisdiction of 2 or more administrative units of the

Bureau of Land Management may be filed at any of the Bureau of Land Management offices having jurisdiction over part of the project, and the applicant shall be notified where subsequent communications shall be directed.

§ 2802.2-2 Coordination of applications.

Applicants filing with any other Federal department or agency for a license, certificate of public convenience and necessity or any other authorization for a project involving a right-of-way on public lands, shall simultaneously file an application under this part with the Bureau of Land Management for a right-of-way grant. To minimize duplication, pertinent information from the application to such department or agency may be appended or referenced in the application for the right-of-way grant.

§ 2802.3 Application content.

§ 2802.3-1 Applicant qualifications and disclosure.

(a) An applicant for a right-of-way grant or temporary use permit shall be a citizen of the United States, an association of such citizens, organized under the laws of the United States or of any State thereof, a corporation or other business entity organized or licensed under the laws of the United States or of any State thereof, a Federal agency, or a State or local government. Aliens may not acquire or hold any direct or indirect interest in right-of-way grants or temporary use permits except that they may own or control stock in corporations holding right-of-way grants or temporary use permits, if the laws of their country do not deny similar or like privileges to citizens of the United States. If 3 percent or more of any class of the stock of a corporation is held or controlled by aliens who are citizens of a country denying similar or like privileges to United States citizens, its application shall be denied. A right-of-way or temporary use permit shall not be granted to a minor, but either may be granted to legal guardians or trustees of minors in their behalf.

(b) An application by a private corporation shall be accompanied by a copy of its charter or articles of incorporation, duly certified by the proper State official where the corporation was organized, and a copy of its bylaws, duly certified by the secretary of the corporation.

(c) A corporation, other than a private corporation, shall file a copy of the law under which it was formed and provide proof of organization under the same, and a copy of its bylaws, duly certified by the secretary of the corporation.

(d) When a corporation is doing business in a State other than that in which it is incorporated, it shall submit a certificate from the Secretary of State or other proper official of that State indicating that it has complied with the laws of the State governing foreign corporations to the extent required to entitle the company to operate in such State, and that the corporation is in good standing under the laws of that State.

(e) A copy of the resolution by the board of directors of the corporation or other documents authorizing the filing of the application shall also be filed.

(f) If the corporation has previously filed with the Department the papers required by this subpart, and there have not been any amendments or revisions of the corporation's charter, articles of incorporation or bylaws, the requirements of this subpart may be met in subsequent applications, by specific reference to the previous filing by date, place and case number.

(g) If the applicant is a partnership, association or other unincorporated entity, the application shall be accompanied by a certified copy of the articles of association, partnership agreement, or other similar document creating the entity, if any. The application shall be signed by each partner or member of the entity, unless the entity shows evidence in the form of a resolution or similar document that one member has been authorized to sign in behalf of the others. In the absence of such resolution each partner shall furnish the evidence of qualification which would be required if the partner or member were applying separately.

(h) If the applicant is a State or local government, or agency or instrumentality thereof, the application shall be accompanied by a statement to that effect and a copy of the law, resolution, order, or other authorization under which the application is made.

(i) Each application by a partnership, corporation, association or other business entity shall, upon the request of the authorized officer, disclose the identity of the participants in the entity and shall include where applicable:

(1) The name, address and citizenship of each participant (partner, associate or other);

(2) Where the applicant is a corporation: the name, address, and citizenship of each shareholder owning 3 percent or more of each class of shares, together with the number and percentage of any class of voting shares of the entity which each shareholder is authorized to vote; and

(3) The name, address, and citizenship of each affiliate of the entity. Where an affiliate is controlled by the entity, the application shall disclose the number of shares and the percentage of each class of voting stock of that affiliate owned, directly or indirectly, by the entity. If an affiliate controls the entity, the number of shares and the percentage of each class of voting stock of the entity owned, directly or indirectly, by the affiliate shall be included.

§ 2802.3-2 Technical and financial capability.

The applicant shall furnish evidence satisfactory to the authorized officer that the applicant has, or prior to commencement of construction shall have, the technical and financial capability to construct, operate, maintain and terminate the project for which authorization is requested.

§ 2802.3-3 Project description.

(a) The applicant shall furnish an explanation of how the project will interrelate with existing and future projects and other developments on the public lands.

(b) The project description shall be in sufficient detail to enable the authorized officer to determine:

(1) Its impact on the environment;

(2) Any benefits provided to the public;

(3) The safety of the proposal; and

(4) The specific public lands proposed to be occupied or used.

(c) When required by the authorized officer, the applicant shall also submit the following:

(1) A description of the proposed facility;

(2) An estimated schedule for construction of all facilities together with anticipated manpower requirements for each stage of construction;

(3) A description of the construction techniques to be used; and

(4) A description of the applicant's alternative route considerations.

§ 2802.3-4 Environmental protection plan.

If the authorized officer determines that the issuance of the right-of-way authorization requires the preparation of an environmental statement, the applicant shall submit a plan for the protection and rehabilitation of the environment during construction, operation, maintenance and termination of the project.

§ 2802.3-5 Additional information.

The applicant shall furnish any other information and data required by the authorized officer to enable him/her to make a decision on the application.

§ 2802.3-6 Maps.

(a) The authorized officer may at his/her discretion require the applicant to file a map with the application. When the authorized officer determines not to require a detailed map prepared in accordance with paragraph (b) of this section, the applicant shall attach to the application a map such as a United States Geological Survey Quadrangle map or aerial photograph showing the approximate location of the facility and processing may proceed. Where the application is accepted without a detailed survey map, the applicant shall be notified that a map pursuant to paragraph (b) of this section shall be required prior to the issuance of the grant or permit, or within 60 days of completion of construction, as determined by the authorized officer, except that the authorized officer may waive all or part of the requirements of paragraph (b) of this section for maps for temporary use permits. When the authorization is for use of an existing road controlled by the United States, any map showing said road shall suffice and the requirements of paragraph (b) of this section shall not apply in this situation.

(b) Maps or aerial photographs portraying linear rights-of-way, as a minimum, shall show the following data:

(1) The bearing and distance of the traverse line or the true centerline of the facility as constructed;

(2) At least one tie to a public land survey monument to either the beginning or ending point of the right-of-way. If a public land survey monument is not within a reasonable distance as determined by the authorized officer, the survey shall be tied to either a relatively permanent manmade structure or monument or some prominent natural feature. However, when the right-of-way crosses both public lands and lands other than public lands, each parcel of public land crossed by said right-of-way must be tied to a public land survey monument, or if the map shows a continuous survey from the beginning point to the ending point of the project regardless of land ownership, then only one corner tie at either the initial or terminal point is required;

(3) The exterior limits of the right-of-way and the width thereof;

(4) A north arrow;

(5) All subdivisions of each section or portion thereof crossed by the right-of-way, with the subdivisions, sections, townships, and ranges clearly and properly noted; and

(6) Scale of the map. The map scale shall be such that all of the required information shown thereon is legible.

(c) Maps portraying non-linear or site-type rights-of-way shall include the requirements of paragraphs (b)(4), (5), and (6) of this section. In addition, the map shall show, as a minimum, the following data:

(1) The bearing and distance of each exterior sideline of the site; and

(2) At least one angle point of the survey shall be tied to a public land survey monument, as provided for in paragraph (b)(2) of this section.

(d) In order to facilitate proper management of the public lands and to assist the authorized officer in developing a sound transportation plan, any person or State or local government which has constructed public highways under the authority of R.S. 2477 (43 U.S.C. 932, repealed October 21, 1976), is provided the opportunity to file within 3 years of the effective date of these regulations a map showing the location of all such public highways constructed under R.S. 2477. Maps filed pursuant to this paragraph should, as a minimum, be a county highway map showing all county roads located on the public lands, a State highway map showing State highways located on public land, and in the case of a municipality, a street or road map showing the location of city streets or roads. An individual who has constructed a public road pursuant to R.S. 2477 should, as a minimum, submit a United States Geological Survey Quadrangle showing the location of said road on public land. The submission of such maps depiciting the location of alleged R.S. 2477 highways shall not be conclusive evidence of their existence. Similarly, failure to depict such roads shall not preclude a later finding as to their existence.

§ 2802.4 Application processing.

(a) The authorized officer shall acknowledge, in writing, receipt of the application and initial cost reimbursement payment required by § 2803.1-1 of this title. An application may be denied if the authorized officer determines that:

(1) The proposed right-of-way or permit would be inconsistent with the purpose for which the public lands are managed;

(2) That the proposed right-of-way or permit would not be in the public interest;

(3) The applicant is not qualified;

(4) The right-of-way or permit would otherwise be inconsistent with the act or other applicable laws; or

(5) The applicant does not or cannot demonstrate that he/she has the technical or financial capacity.

(b) Upon receipt of the acknowledgement, the applicant may continue his or her occupancy of the public land pursuant to § 2802.1(d) of this title to continue to gather data necessary to perfect the application. However, if the applicant finds or the authorized officer determines that surface disturbing activities will occur in gathering the necessary data to perfect the application, the applicant shall file an application for a temporary use permit prior to entering into such activities on the public land.

(c) The authorized officer may require the applicant for a right-of-way grant to submit such additional information as he deems necessary for review of the application. All requests for additional information shall be in writing. Where the authorized officer determines that the information supplied by the applicant is incomplete or does not conform to the act or these regulations, the authorized officer shall notify the applicant of these deficiencies and afford the applicant an opportunity to file a correction. Where a deficiency notice has not been adequately complied with, the authorized officer may reject the application or notify the applicant of the continuing deficiency and afford the applicant an opportunity to file a correction.

(d) Prior to issuing a right-of-way grant or temporary use permit, the authorized officer shall:

(1) Complete an environmental analysis in accordance with the National Environmental Policy Act of 1969;

(2) Determine compliance of the applicant's proposed plans with applicable Federal and State laws;

(3) Consult with all other Federal, State, and local agencies having an interest, as appropriate; and

(4) Take any other action necessary to fully evaluate and make a decision to approve or deny the application and prescribe suitable terms and conditions for the grant or permit.

(e) The authorized officer may hold public meetings on an application for a right-of-way grant or temporary use permit if he determines that such meetings are appropriate and that sufficient public interest exists to warrant the time and expense of such meetings. Notice of public meetings shall be published in the FEDERAL REGISTER or in local newspapers or in both.

(f) A right-of-way grant or temporary use permit need not conform to the applicant's proposal, but may contain such modifications, terms, stipulations or conditions, including changes in route or site location on public lands, as the authorized officer determines to be appropriate.

(g) No right-of-way grant or temporary use permit shall be in effect until the applicant has accepted, in writing, the terms and conditions of the grant or permit. Written acceptance shall constitute an agreement between the applicant and the United States that, in consideration of the right to use public lands, the applicant shall comply with all terms and conditions contained in the authorization and the provisions of applicable laws and regulations.

(h) The authorized officer may place a provision in a right-of-way grant requiring that no construction on or use of the right-of-way shall occur until detailed construction or use plans have been submitted to the authorized officer for approval and one or more notices to proceed with that construction or use have been issued by the authorized officer. This requirement may be imposed for all or any part of the right-of-way.

§ 2802.5 Special application procedures.

An applicant filing for a right-of-way within 4 years from the effective date of this subpart for an unauthorized right-of-way that existed on public land prior to October 21, 1976, is not:

(a) Required to reimburse the United States for costs incurred for processing an application and for the preparation of reports and statements pursuant to the National Environmental Policy Act of 1969 (see § 2803.1-1(a)(1)) which are above the schedule shown in § 2803.1-1(a)(3)(i) of this title.

(b) Required to reimburse the United States for costs incurred incident to a right-of-way for monitoring (the construction, operation, maintenance and termination) of authorized facilities as required in § 2803.1-1(b) of this title.

(c) Required to pay rental fees for the period of unauthorized land use.

Subpart 2803—Administration of Rights Granted

§ 2803.1 General requirements.

§ 2803.1-1 Reimbursement of costs.

(a) (1) An applicant for a right-of-way grant or a temporary use permit shall reimburse the United States for administrative and other costs incurred by the United States in processing the application, including the preparation of reports and statements pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), before the right-of-way grant or temporary use permit shall be issued under the regulations of this title.

(2) The regulations contained in this subpart do not apply to:

(i) State or local governments or agencies or instrumentalities thereof where the public lands shall be used for governmental purposes and such lands and resources shall continue to serve the general public, except (A) as to right-of-way grants or temporary use permits issued to State or local governments or agencies or instrumentalities thereof or a municipal utility or cooperative whose principal source of revenue is derived from charges levied on customers for services rendered that are similar to services rendered by a profit making corporation or business enterprise, or (B) as to right-of-way grants or temporary use permits issued under section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 180);

(ii) Road use agreements or reciprocal road agreements; or

(iii) Federal agencies.

(3) An applicant shall submit with each application a nonreturnable payment in accordance with the following schedule:

(i) Each right-of-way grant or temporary use permit for crossing public lands (e.g., for powerlines, pipelines, roads and other linear uses).

Length	Payments
Less than 5 miles	$50 per mile or fraction thereof.
5 to 20 miles	$500.
20 miles and over	$500 for each 20 miles or fraction thereof.

(ii) Each right-of-way grant or temporary use permit for non-linear uses (e.g. for communication sites, reservoir sites, plant sites, and camp sites)—$250 for each 40 acres or fraction thereof.

(4) When an application is received, the authorized officer shall estimate the costs expected to be incurred by the United States in processing the application. If, in the judgment of the authorized officer, such costs will exceed the payment required by paragraph (a)(3) of this section by an amount which is greater than the cost of maintaining actual cost records for the application review process, the authorized officer shall require the applicant to make periodic payments of the estimated reimbursable costs prior to the incurrence of such costs by the United States. Such payments may be refunded or adjusted as provided by paragraph (a)(8) of this section.

(5) Prior to the issuance of a right-of-way grant or temporary use permit, the applicant shall be required to pay additional amounts to the extent the costs of the United States have exceeded the payments required by paragraphs (a)(3) and (4) of this section.

(6) An applicant whose application is denied shall be responsible for administrative and other costs incurred by the United States in processing its application, and such amounts as have not been paid in accordance with paragraphs (a)(3) and (4) of this section shall be due within 30 days of receipt of notice from the authorized officer of the amount due.

(7) An applicant which withdraws its application before a decision is reached on said application is responsible for costs incurred by the United States in processing such application up to the date upon which the author-

ized officer receives written notice of the withdrawal, and for costs subsequently incurred by the United States in terminating the application review process. Reimbursement of such costs shall be due within 30 days of receipt of notice from the authorized officer of the amount due.

(8) If payment, as required by paragraphs (a)(4) and (b)(3) of this section, exceeds actual costs to the United States, refund may be made by the authorized officer from applicable funds under authority of 43 U.S.C. 1734, or the authorized officer may adjust the next billing to reflect the overpayment previously received. Neither an applicant nor a holder shall set off or otherwise deduct any debt due to or any sum claimed to be owed them by the United States without the prior written approval of the authorized officer.

(9) The authorized officer shall, on request, give an applicant or a prospective applicant an estimate, based on the best available cost information, of the costs which would be incurred by the United States in processing an application. However, reimbursement shall not be limited to the estimate of the authorized officer if actual costs exceed the projected estimate.

(10) When 2 or more applications for right-of-way grants are filed which the authorized officer determines to be in competition with each other, each applicant shall reimburse the United States according to paragraphs (a)(3) through (7) of this section, except that those costs which are not readily identifiable with one of the applications, such as costs for portions of an environmental statement that relate to all of the proposals generally, shall be paid by each of the applicants in equal shares.

(11) When through partnership, joint venture or other business arrangement, more than one person, partnership, corporation, association or other entity apply together for a right-of-way grant or temporary use permit, each such applicant shall be jointly and severally liable for costs under § 2803.1-1 of this title.

(12) When 2 or more noncompeting applications for right-of-way grants are received for what, in the judgment of the authorized officer, is one right-of-way system, all the applicants shall be jointly and severally liable for costs under § 2803.1-1 of this title for the entire system; subject, however, to the provisions of paragraph (a)(11) of this section.

(13) The regulations contained in § 2803.1-1 of this title are applicable to all applications for right-of-way grants or temporary use permits incident to rights-of-way over the public lands pending on June 1, 1975.

(b) (1) After issuance of a right-of-way grant or temporary use permit for which fees were assessed under paragraph (a) of this section, the holder thereof shall reimburse the United States for costs incurred by the United States in monitoring the construction, operation, maintenance and termination of authorized facilities on the right-of-way or permit area, and for protection and rehabilitation of the lands involved.

(2) Each holder of a right-of-way grant or temporary use permit shall submit within 60 days of the issuance thereof a nonreturnable payment in accordance with the following schedule:

(i) Each right-of-way grant or temporary use permit for crossing public lands (e.g., for powerlines, pipelines, roads, and other linear uses).

Length	Payment
Less than 5 miles	$20 per mile or fraction thereof.
5 to 20 miles	$200.
20 miles and over	$200 for each 20 miles or fraction thereof.

(ii) Each right-of-way grant or temporary use permit (e.g., for communication sites, reservoir sites, plant sites, and camp sites)—$100 for each 40 acres or fraction thereof.

(iii) If a project has the feature of paragraphs (b)(2) (i) and (ii) of this section in combination, the payment shall be the total of the amounts required by paragraphs (b)(2) (i) and (ii) of this section.

(3) When a right-of-way grant or temporary use permit is issued, the authorized officer shall estimate the costs, based on the best available cost

information, expected to be incurred by the United States in monitoring holder activity. If such costs exceed the payment required by paragraph (b)(2) of this section by an amount which is greater than the costs of maintaining actual costs records for the monitoring process, the authorized officer shall require the holder to make periodic payments of the estimated reimbursable costs prior to the incurrence of such costs by the United States. Such payments may be refunded or adjusted as provided by paragraph (a)(8) of this section.

(4) Following termination of a right-of-way grant or temporary use permit, the former holder shall be required to pay additional amounts to the extent the actual costs incurred by the United States have exceeded the payments required by paragraphs (b) (2) and (3) of this section.

§ 2803.1-2 Rental fees.

(a) The holder of a right-of-way grant or temporary use permit, except as provided in paragraphs (b) and (c) of this section, or when waived by the Secretary, shall pay annually, in advance, the fair market rental value as determined by the authorized officer. Said fee shall be based upon the fair market value of the rights authorized in the right-of-way grant or temporary use permit, as determined by appraisal by the authorized officer, provided however, that where the annual fee is $100 or less, an advanced lump-sum payment for 5 years for right-of-way grants and 3 years for temporary use permits may be required. The lump-sum for use and occupancy of lands under these regulations shall not be less than $25.00.

(b) To expedite the processing of any grant or permit pursuant to this part, the authorized officer may establish an estimated rental fee and collect this fee in advance with the provision that upon receipt of an approved fair market value appraisal the advance rental fee shall be adjusted accordingly.

(c) No fee, or a fee less than fair market rental, may be authorized under the following circumstances:

(1) When the holder is a Federal, State or local government or any agency or instrumentality thereof, excluding municipal utilities and cooperatives whose principal source of revenue is customer charges.

(2) When the holder is a nonprofit corporation or association which is not controlled by or is not a subsidiary of a profit making corporation or business enterprise.

(3) When a holder provides without charge, or at reduced rates, a valuable benefit to the public or to the programs of the Secretary.

(4) Rental fees may be waived for rights-of-way involving cost share roads and reciprocal right-of-way agreements.

(5) In instances where the applicant holds an outstanding permit, lease, license or contract for which the United States is already receiving compensation, except under an oil and gas lease where the lessee is required to secure a right-of-way grant or temporary use permit under § 2880 of this title, no rental fee shall be charged for the following:

(i) Where the applicant needs a right-of-way grant or temporary use permit within the exterior boundaries of the permit, lease, license or contract area; and

(ii) Where the applicant needs a right-of-way across public lands outside the permit, lease, license or contract area in order to reach said area.

(d) Rental fees may be initiated or adjusted whenever necessary to reflect current fair market value:

(1) As a result of reappraisal of fair market values which shall occur at least once every 5 years, or (2) as a result of a change in the holder's qualifications under paragraph (c) of this section. Reasonable notice shall be given prior to imposing or adjusting rental fees pursuant to this paragraph. Decisions on fees are subject to appeal pursuant to § 2804 of this title.

(e) If a charge required by this section is not paid when due, and such default shall continue for 30 days after notice, action may be taken to terminate the right-of-way grant. After default has occurred, no structures, buildings or other equipment may be removed from the servient lands except upon written permission from the authorized officer.

§ 2803.1-3 Bonding.

The authorized officer may require the holder of a right-of-way grant or temporary use permit to furnish a bond or other security satisfactory to him, to secure the obligations imposed by the grant or permit and applicable laws and regulations.

§ 2803.1-4 Liability.

(a) Except as provided in paragraph (f) of this section, each holder shall be fully liable to the United States for any damage or injury incurred by the United States in connection with the use and occupancy of the right-of-way or permit area by the holder.

(b) Except as provided in paragraph (f) of this section, holders shall be held to a standard of strict liability for any activity or facility within a right-of-way or permit area which the authorized officer determines, in his discretion, presents a foreseeable hazard or risk of damage or injury to the United States. The activities and facilities to which such standards shall apply shall be specified in the right-of-way grant or temporary use permit. Strict liability shall not be imposed for damage or injury resulting primarily from an act of war, an Act of God or the negligence of the United States. To the extent consistent with other laws, strict liability shall extend to costs incurred by the United States for control and abatement of conditions, such as fire or oil spills, which threaten lives, property or the environment, regardless of whether the threat occurs on areas that are under Federal jurisdiction. Stipulations in right-of-way grants and temporary use permits imposing strict liability shall specify a maximum limitation on damages which, in the judgment of the authorized officer, is commensurate with the foreseeable risks or hazards presented. The maximum limitation shall not exceed $1,000,000 for any one event, and any liability in excess of such amount shall be determined by the ordinary rules of negligence of the jurisdiction in which the damage or injury occurred.

(c) In any case where strict liability is imposed and the damage or injury was caused by a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction in which the damage or injury occurred.

(d) Except as provided in paragraph (f) of this section, holders shall be fully liable for injuries or damages to third parties resulting from activities or facilities on lands under Federal jurisdiction in which the damage or injury occurred.

(e) Except as provided in paragraph (f) of this section, holders shall fully indemnify or hold harmless the United States for liability, damage or claims arising in connection with the holder's use and occupancy of rights-of-way or permit areas.

(f) If a holder is a State or local government, or agency or instrumentality thereof, it shall be liable to the fullest extent its laws allow at the time it is granted a right-of-way grant or temporary use permit. To the extent such a holder does not have the power to assume liability, it shall be required to repair damages or make restitution to the fullest extent of its powers at the time of any damage or injury.

(g) All owners of any interest in, and all affiliates or subsidiaries of any holder of a right-of-way grant or temporary use permit, except for corporate stockholders, shall be jointly and severally liable to the United States in the event that a claim cannot be satisfied by the holder.

(h) Except as otherwise expressly provided in this section, the provision in this section for a remedy is not intended to limit or exclude any other remedy.

(i) If the right-of-way grant or temporary use permit is issued to more than one holder, each shall be jointly and severally liable under this section.

§ 2803.2 Holder activity.

(a) If a notice to proceed requirement has been included in the grant or permit, the holder shall not initiate construction, occupancy or use until the authorized officer issues a notice to proceed.

(b) Any substantial deviation in location or authorized use by the holder during construction, operation or maintenance shall be made only with prior approval of the authorized officer under § 2803.6-1 of this title for the purposes of this paragraph, substantial deviation means:

(1) With respect to location, the holder has constructed the authorized facility outside the prescribed boundaries of the right-of-way authorized by the instant grant or permit.

(2) With respect to use, the holder has changed or modified the authorized use by adding equipment, overhead or underground lines, pipelines, structures or other facilities not authorized in the instant grant or permit.

(c) The holder shall notify the authorized officer of any change in status subsequent to the application or issuance of the right-of-way grant or temporary use permit. Such changes include, but are not limited to, legal mailing address, financial condition, business or corporate status. When requested by the authorized officer, the holder shall update and/or attest to the accuracy of any information previously submitted.

(d) If required by the terms of the right-of-way grant or temporary use permit, the holder shall, subsequent to construction and prior to commencing operations, submit to the authorized officer a certification of construction, verifying that the facility has been constructed and tested in accordance with terms of the right-of-way grant or temporary use permit, and in compliance with any required plans and specifications, and applicable Federal and State laws and regulations.

§ 2803.3 Immediate temporary suspension of activities.

(a) If the authorized officer determines that an immediate temporary suspension of activities within a right-of-way or permit area for violation of the terms and conditions of the right-of-way authorization is necessary to protect public health or safety or the environment, he/she may promptly abate such activities prior to an administrative proceeding.

(b) The authorized officer may give an immediate temporary suspension order orally or in writing at the site of the activity to the holder or a contractor or subcontractor of the holder, or to any representative, agent, employee or contractor of the holder, and the suspended activity shall cease at that time. As soon as practicable, the authorized officer shall confirm an oral order by a written notice to the holder addressed to the holder or the holder's designated agent.

(c) An order of immediate temporary suspension of activities shall remain effective until the authorized officer issues an order permitting resumption of activities.

(d) Any time after an order of immediate temporary suspension has been issued, the holder may file with the authorized officer a request for permission to resume. The request shall be in writing and shall contain a statement of the facts supporting the request.

(e) The authorized officer may render an order to either grant or deny the request to resume within 5 working days of the date the request is filed. If the authorized officer does not render an order on the request within 5 working days, the request shall be considered denied, and the holder shall have the same right to appeal the denial as if a final order denying the request had been issued by the authorized officer.

§ 2803.4 Suspension and termination of right-of-way authorizations.

(a) If the right-of-way grant or temporary use permit provides by its terms that it shall terminate on the occurrence of a fixed or agreed-upon condition, event, or time, the right-of-way authorization shall thereupon automatically terminate by operation of law, unless some other procedure is specified in the right-of-way grant or temporary use permit. The authorized officer may terminate a right-of-way grant or temporary use permit when the holder requests or consents to its termination in writing.

(b) The authorized officer may suspend or terminate a right-of-way grant or temporary use permit if he determines that the holder is unwilling, unable or has failed to comply with applicable laws or regulations, or any terms, conditions or stipulations of the right-of-way grant or temporary use permit or has abandoned the right-of-way.

(c) Failure of the holder of a right-of-way grant to use the right-of-way for the purpose for which the authorization was issued for any continuous five-year period shall constitute a presumption of abandonment. The holder may rebut the presumption by proving that his failure to use the right-of-way was due to circumstances not within the holder's control.

(d) Before suspending or terminating a right-of-way grant pursuant to paragraph (b) of this section, the authorized officer shall give the holder written notice that such action is contemplated and the grounds therefor and shall allow the holder a reasonable opportunity to cure such noncompliance.

(e) In the case of a right-of-way grant that is under its terms an easement, the authorized officer shall give written notice to the holder of the suspension or termination and shall refer the matter to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge pursuant to 43 CFR Part 4. If the Administrative Law Judge determines that grounds for suspension or termination exist and such action is justified, the authorized officer shall suspend or terminate the right-of-way grant.

§ 2803.4-1 Disposition of improvements upon terminations.

Within a reasonable time after termination, revocation or cancellation of a right-of-way grant, the holder shall, unless directed otherwise in writing by the authorized officer, remove such structures and improvements and shall restore the site to a condition satisfactory to the authorized officer. If the holder fails to remove all such structures or improvements within a reasonable period, as determined by the authorized officer, they shall become the property of the United States, but the holder shall remain liable for the cost of removal of the structures and improvements and for restoration of the site.

§ 2803.5 Change in Federal jurisdiction or disposal of lands.

(a) Where a right-of-way grant or temporary use permit administered under these regulations traverses public lands that are transferred to another Federal agency, administration of the right-of-way shall, at the discretion of the authorized officer, be assigned to the acquiring agency unless such assignment would diminish the rights of the holder.

(b) Where a right-of-way grant or temporary use permit traverses public lands that are transferred out of Federal ownership, the transfer of the land shall, at the discretion of the authorized officer, include an assignment of the right-of-way, be made subject to the right-of-way, or the United States may reserve unto itself the land encumbered by the right-of-way.

§ 2803.6 Amendments, assignments and renewals.

§ 2803.6-1 Amendments.

(a) Any substantial deviation in location or use as set forth in § 2803.2(b) of this title shall require the holder of a grant or permit to file an amended application. The requirements for the amended application and the filing are the same and shall be accomplished in the manner as set forth in Subpart 2802 of this title.

(b) Holders of right-of-way grants issued before October 21, 1976, who find it necessary or are directed by the authorized officer to amend their grants shall comply with paragraph (a) of this section in filing their applications. Upon acceptance of the amended application by the authorized officer an amended right-of-way grant shall be issued. To the fullest extent possible, and when in the public interest as determined from current land use plans and other management decisions, the amended grant shall contain the same terms and conditions set forth in the original grant with respect to annual rent, duration and nature of interest.

§ 2803.6-2 Amendments to existing railroad grants.

(a) An amended application required under § 2803.6-1(a) or (b), as appropriate, shall be filed with the authorized officer for any realignment of a railroad and appurtenant communication facilities which are required to be relocated due to the realignment. Upon acceptance of the amended application by the authorized officer, an amended right-of-way grant shall be issued within 6 months of date of acceptance of the application. The date of acceptance of the application for the purpose of this paragraph shall be determined in accordance with § 2802.4(a) of this title.

(b) Notwithstanding the regulations of this part, the authorized officer may include in the amended grant the same terms and conditions of the original grant with respect to the payment of annual rental, duration, and nature of interest if he/she finds them to be in the public interest and the lands involved are not within an incorporated community and are of approximately equal value.

§ 2803.6-3 Assignments.

Any proposed assignment in whole or in part of any right or interest in a right-of-way grant or temporary use permit acquired pursuant to the regulations of this part shall be filed in accordance with §§ 2802.1-1 and 2802.3 of this title. The application for assignment shall be accompanied by the same showing of qualifications of the assignee as if the assignee were filing an application for a right-of-way grant or temporary use permit under the regulations of this part. In addition, the assignment shall be supported by a stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the grant to be assigned plus any additional terms and conditions and any special stipulations that the authorized officer may impose. No assignment shall be recognized unless and until it is approved in writing by the authorized officer.

§ 2803.6-4 Reimbursement of cost for assignments.

All filings for assignments made pursuant to this section shall be accompanied by a nonrefundable payment of $50.00 from the assignor. Exceptions for a nonrefundable payment for an assignment are same as in § 2802.1 of this title.

§ 2803.6-5 Renewals of right-of-way grants and temporary use permits.

(a) When a grant provides that it may be renewed, the authorized officer shall renew the grant so long as the project or facility is still being used for purposes authorized in the original grant and is being operated and maintained in accordance with all the provisions of the grant and pursuant to the regulations of this title. Prior to renewing the grant, the authorized officer may modify the grant's terms, conditions, and special stipulations to reflect any new requirements imposed by current Federal and State land use plans, laws, regulations or other management decisions.

(b) When a grant does not contain a provision for renewal, the authorized officer, upon request from the holder and prior to the expiration of the grant, may renew the grant at his discretion. A renewal pursuant to this section shall comply with the same provisions contained in paragraph (a) of this section.

(c) Temporary use permits issued pursuant to the regulations of this part may be renewed at the discretion of the authorized officer. The holder of a permit desiring a renewal shall notify the authorized officer in writing of the need for renewal prior to its expiration date. Upon receipt of the notice, the authorized officer shall either renew the permit or reject the request.

(d) Renewals of grants and permits pursuant to paragraphs (a), (b) and (c) of this section are not subject to § 2803.1-1 of this title.

(e) Denial of any request for renewal by the authorized officer under paragraphs (b) and (c) of this section shall be final with no right of review or appeal.

Subpart 2804—Appeals

§ 2804.1 Appeals procedure.

(a) All appeals under this part shall be taken under 43 CFR Part 4 from any final decision of the authorized officer to the Office of the Secretary, Board of Land Appeals.

(b) All decisions of the authorized officer under this part shall remain effective pending appeal unless the Secretary rules otherwise, and the provisions of 43 CFR 4.21(a) shall not apply to such decisions.

Subpart 2805—Applications for Electric Power Transmission Lines of 66 KV or Above

§ 2805.1 Application requirements.

(a) Each application for authority to construct, work and maintain a facility for the generation of electric power and energy or for the transmission or distribution of electric power and energy of 66 kilovolts or higher under this subpart shall be referred to the Secretary of the Department of Energy to determine the relationship of the proposed facility to the power-marketing program of the United States. Where the proposed facility does not conflict with the program of the United States, the authorized officer, upon notification to that effect, shall proceed to act upon the application. In the case of necessary changes respecting the proposed location, construction or utilization of the facility in order to eliminate conflicts with the power-marketing program of the United States, the authorized officer shall obtain from the applicant written consent to or compliance with such requirements before taking further action on the application: *Provided, however,* That if increased costs to the applicant result from changes to eliminate conflicts with the power-marketing program of the United States, and it is determined that a right-of-way should be granted, such changes will be required upon equitable contract arrangements with the Secretary of the Department of Energy covering costs and other appropriate factors.

(b) The applicant shall make provision, or bear the reasonable cost, as may be determined by the Secretary of the Department of Energy, of making provision for avoiding inductive or conductive interference between any transmission facility or other works constructed, operated or maintained by it on the right-of-way authorized under the grant and any radio installation, telephone line or other communication facilities existing when the right-of-way is authorized or any such installation, line or facility thereafter constructed or operated by the United States or any agency thereof. This provision shall not relieve the applicant from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating conductive interference.

(c) An applicant for a right-of-way for a transmission facility having a voltage of 66 kilovolts or more shall execute and file with its application a stipulation agreeing to accept the right-of-way grant subject to the following conditions:

(1) In the event the United States, pursuant to law, acquires the applicant's transmission or other facilities constructed on or across such right-of-way, the price to be paid by the United States shall not include or be affected by any value of the right-of-way granted to the applicant under authority of the regulations of this part.

(2) The Department of Energy shall be allowed to utilize for the transmission of electric power and energy any surplus capacity of the transmission facility in excess of the capacity needed by the holder in connection with the holder's operations, or to increase the capacity of the transmission facility at the Department's expense and utilize such increased capacity for the transmission of electric power and energy. The utilization of surplus or increased capacity shall be subject to the following terms and conditions:

(i) When the Department of Energy desires to utilize surplus capacity thought to exist in the transmission facility, notification shall be given to the holder, and the holder shall furnish to the Department of Energy within 30 days a certificate stating whether the transmission facility has any surplus capacity not needed by the holder for the transmission of electric power and energy in connection with the holder's operations and, if so, the amount of such surplus capacity.

(ii) Where the certificate indicates that there is no surplus capacity or that the surplus capacity is less than that required by the Department of

Energy, the authorized officer may call upon the holder to furnish additional information upon which its certification is based. Upon receipt of such additional information, the authorized officer shall determine whether surplus capacity is available, and if so, the amount of such surplus capacity.

(iii) In order to utilize any surplus capacity determined to be available, or any increased capacity provided by the Department of Energy at its own expense, the Department of Energy may interconnect its transmission facilities with the holder's transmission facility in a manner conforming to approved standards of practice for the interconnection of transmission circuits.

(iv) The expense of interconnection will be borne by the Department of Energy which shall at all times provide and maintain adequate protective equipment to insure the normal and efficient operation of the holder's transmission facilities.

(v) After any interconnection is completed, the holder shall operate and maintain its transmission facilities in good condition, and except in emergencies, shall maintain in a closed position all connections under the holder's control necessary for the transmission of the Department of Energy's power and energy over the holder's transmission facilities. The parties may, by mutual consent, open any switch where necessary or desirable for maintenance, repair or construction.

(vi) The transmission of electric power and energy by the Department of Energy over the holder's transmission facilities shall be effected in such manner as shall not interfere unreasonably with the holder's use of the transmission facilities in accordance with the holder's normal operating standards, except that the Department of Energy shall have the exclusive right to utilize any increased capacity of the transmission facility which has has been provided at the Department of Energy's expense.

(vii) The holder shall not be obligated to allow the transmission of electric power and energy by the Department of Energy to any person receiving service from the holder on the date of the filing of the application for grant, other than statutory preference customers including agencies of the Federal Government.

(viii) The Department of Energy shall pay to the holder an equitable share of the total monthly cost of that part of the holder's transmission facilities utilized by the Department for the transmission of electric power and energy. The payment shall be based on an amount in dollars representing the same proportion of the total monthly cost of such part of the transmission facilities as the maximum amount in kilowatts of the power transmitted on a scheduled basis by the Department over the holder's transmission facilities bears to the total capacity in kilowatts of that portion of the transmission facilities. The total monthly cost shall be determined in accordance with the system of accounts prescribed by the Federal Energy Regulatory Commission, exclusive of any investment by the Department of Energy in the part of the transmission facilities utilized by the Department.

(ix) If, at any time subsequent to a certification by the holder or determination by the authorized officer that surplus capacity is available for utilization by the Department of Energy, the holder needs the whole or any part of this capacity theretofore certified or determined as being surplus to the needs of the holder, the holder may request the authorized officer to modify or revoke the previous certification or determination by making application to the authorized officer not later than 36 months in advance of the holder's needs. Any modification or revocation of the certification of determination shall not affect the right of the Department of Energy to utilize facilities provided at its expense or available under a contract entered into by reason of the equitable contract arrangements provided for in this paragraph.

(x) If the Department of Energy and the holder disagree as to the existence or amount of surplus capacity in carrying out the terms and conditions of this paragraph, the disagreement shall be decided by a board of three persons composed as follows: The holder and the Department of Energy shall each appoint a member of the board and the two members shall appoint a third member. If the members appointed by the holder and the Department of Energy are unable to agree on the designation of the third member, he shall be designated by the Chief Judge of the United States Court of Appeals of the circuit in which the major share of the facilities involved is located. The board shall determine the issue and its determination, by majority vote, shall be binding on tne Department of Energy and the holder.

(xi) As used in this section, the term "transmission facility" includes (a) all types of facilities for the transmission of electric power and energy and facilities for the interconnection of such facilities, and (b) the entire transmission line and associated facilities from substation or interconnection point to substation or interconnection point, of which the segment crossing the lands of the United States forms a part.

(xii) The terms and conditions prescribed in this paragraph may be modified at any time by means of a supplemental agreement negotiated between the holder and the Department of Energy which agreement shall be concurred in by the Secretary of the Interior.

Subpart 2806—Designation of Right-of-Way Corridors

§ 2806.1 Corridor designation.

(a) The authorized officer may, based upon his/her motion or receipt of an application, designate right-of-way corridors across any public lands in order to minimize adverse environmental impacts and the proliferation of separate rights-of-way. The designation of corridors shall not preclude the granting of separate rights-of-way over, upon, under or through the public lands where the authorized officer determines that confinement to a corridor is not appropriate.

(b) Any existing transportation or utility right-of-way that is capable of accommodating an additional compatible right-of-way may be designated as a right-of-way corridor by the authorized officer without further review. Subsequent right-of-way grants shall, to the extent practical and as determined by the authorized officer, be confined to designated corridors, however, the designation of a right-of-way corridor is not a commitment by the authorized officer to issue right-of-way grants within the corridor. All applications for right-of-way grants, including those within designated corridors, are subject to the procedure for approval set forth in Subpart 2802 of this title.

(c) Upon a determination by the authorized officer and based upon the criteria of § 2806.2 of this title, a right-of-way corridor shall be designated by publication of a notice in the FEDERAL REGISTER.

§ 2806.2 Designation criteria.

The locations and boundary designations of right-of-way corridors shall be determined by the authorized officer after a thorough review of:

(a) Federal, State and local land-use plans and applicable Federal and State laws.

(b) Environmental impacts on natural resources including soil, air, water, fish, wildlife, vegetation and on cultural resources.

(c) Physical effects and constraints on corridor placement or rights-of-way placed therein due to geology, hydrology, meteorology, soil or land forms.

(d) Economic efficiency of placing a right-of-way within a corridor, taking into consideration costs of construction, operation and maintenance, and costs of modifying or relocating existing facilities in a proposed corridor.

(e) National security risks.

(f) Potential health and safety hazards to the public lands users and the general public due to materials or activities within the right-of-way corridor.

(g) Engineering and technological compatibility of proposed and existing facilities.

(h) Social and economic impacts of the facilities on public lands users, adjacent landowners and other groups or individuals.

§ 2806.2-1 Procedures for designation.

(a) The authorized officer shall, to the extent practical, designate right-of-way corridors that are consistent with the Bureau of Land Management's land use plans. In making designations, the authorized officer shall consult with Federal, State, and local agencies, local landowners, and other interested user groups in a manner that provides an opportunity for interested parties to express their views and have those views considered prior to corridor designation.

(b) The authorized officer shall take appropriate measures to inform the public of designated utility transportation corridors, so that existing and potential right-of-way applicants, governmental agencies and the general public will be aware of such corridor locations and any restrictions applicable thereto. Public notice of such designations may be given through publication in local newspapers or through distribution of planning documents, environmental impact statements or other appropriate documents.

Subpart 2807—Reservation to Federal Agencies

§ 2807.1 Application filing.

A Federal agency desiring a right-of-way or temporary use permit over, upon, under or through the public lands pursuant to this part, shall apply to the authorized officer and comply with the provisions of Subpart 2802 of this title to the extent that the requirements of Subpart 2802 of this title are appropriate for Federal agencies.

§ 2807.1-1 Document preparation.

(a) The right-of-way reservation need not conform to the agency's proposal, but may contain such modifications, terms, conditions or stipulations, including changes in route or site location, as the authorized officer determines appropriate.

(b) All provisions of the regulations contained in this part shall, to the extent possible, apply and be incorporated into the reservation to the Federal agency.

§ 2807.1-2 Reservation termination and suspension.

The authorized officer may suspend or terminate the reservation only in accordance with the terms and conditions of the reservation, or with the consent of the head of the department or agency holding the reservation.

PART 2810—TRAMROADS AND LOGGING ROADS

Subpart 2812—Over O. and C. and Coos Bay Revested Lands

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Subpart 2812—Over O. and C. and Coos Bay Revested Lands

Source: 35 FR 9638, June 13, 1970, unless otherwise noted.

§ 2812.0-3 Authority.

(a) The Act of January 21, 1895 (28 Stat. 635, 43 U.S.C. 956) authorizes the Secretary of the Interior under such regulations as may be fixed by him to permit the use of rights-of-way over the public lands of the United States, for tramroads to the extent of 50 feet on each side of the centerline of the tramroad, by any citizen or association of citizens of the United States, engaged in the business of mining, or quarrying or of cutting timber and manufacturing timber. The Act of January 21, 1895, is made applicable to the Revested Oregon and California Railroad and the Reconveyed Coos Bay Wagon Road Grant Lands by the acts of June 9, 1916 (39 Stat. 218) and Februrary 26, 1919 (40 Stat. 1179), respectively.

(b) The Act of August 28, 1937 (50 Stat. 874) provides for the conservation and management of the O. and C. lands and authorizes the Secretary of the Interior to make rules and regulations in furtherance of such pruposes.

§ 2812.0-5 Definitions.

Except as the context may otherwise indicate, as the terms are used in this paragraph:

(a) "Bureau" means Bureau of Land Management.

(b) "Timber of the United States" or "federal timber" means timber owned by the United States or managed by any agency thereof, including timber on allotted and tribal Indian lands in the O. and C. area.

(c) "State Director" means the State Director, Bureau of Land Management, or his authorized representative.

(d) "Authorized Officer" means an employee of the Bureau of Land Management to whom has been delegated the authority to take action.

(e) "O. and C. lands" means the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands, other lands administered by the Bureau under the provisions of the act approved August 28, 1937, and the public lands administered by the Bureau of Land Management which are in Oregon and in and west of Range 8 E., Willamette Meridian, Oregon.

(f) "Tramroads" include tramways, and wagon or motor-truck roads to be used in connection with logging, and the manufacturing of lumber; it also includes railroads to be used principally for the transportation, in connection with such activities, of the property of the owner of such railroad.

(g) "Management" means police protection, fire presuppression and suppression, inspection, cruising, reforesting, thinning, stand improvement, inventorying, surveying, construction and maintenance of improvements, disposal of land, the eradication of forest insects, pests and disease, and other activities of a similar nature.

(h) "Licensee" of the United States is, with respect to any road or right-of-way, any person who is authorized to remove timber or forest products from lands of the United States, or to remove timber or forest products from other lands committed by a cooperative agreement to coordinated administration with the timber of the United States over such road or right-of-way while it is covered by an outstanding permit, or while a former permittee is entitled to receive compensation for such use under the provisions of these regulations. A licensee is not an agent of the United States.

(i) "Direct control" of a road, right-of-way, or land, by an applicant for a permit hereunder means that such applicant has authority to permit the United States and its licensees to use such road, right-of-way of land in accordance with this paragraph.

(j) "Indirect control" of a road, right-of-way, or land, by an applicant hereunder means that such road, right-of-way, or land, is not directly controlled by him but is subject to use by him or by:

(1) A principal, disclosed or undisclosed, of the applicant; or

(2) A beneficiary of any trust or estate administered or established by the applicant; or

(3) Any person having or exercising the right to designate the immediate destination of the timber to be transported over the right-of-way for which application is made; or

(4) Any person who at any time has owned, or controlled the disposition of the timber to be transported over the right-of-way applied for, and during the 24 months preceding the filing of the application has disposed of such ownership or control to the applicant or his predecessor, under an agreement reserving or conferring upon the grantor the right to share directly or indirectly in the proceeds realized upon the grantee's disposal to third persons of the timber or products derived therefrom or the right to reacquire ownership or control of all or any part of the timber prior to the time when it undergoes its first mechanical alteration from the form of logs; or

(5) Any person who stands in such relation to the applicant that there is liable to be absence of arm's length bargaining in transactions between them relating to such road, rights-of-way, or lands.

§ 2812.0-6 Statement of policy.

(a) The intermingled character of the O. and C. lands presents peculiar problems of management which require for their solution the cooperation between the Federal Government and the owners of the intermingled lands, particularly with respect to timber roads.

(b) It is well established that the value of standing timber is determined in significant part by the cost of transporting the logs to the mill. Where there is an existing road which is adequate or can readily be made adequate for the removal of timber in the area, the failure to make such road available for access to all the mature and overmature timber it could tap leads to economic waste. Blocks of timber which are insufficient in volume or value to support the construction of a duplicating road may be left in the woods for lack of access over the existing road. Moreover, the duplication of an existing road reduces the value of the federal and other timber which is tapped by the existing road.

(c) It is also clear that the Department of the Interior, which is responsible for the conservation of the resources of the O. and C. lands and is charged specifically with operating the timber lands on a sustained-yield basis, must have access to these lands for the purpose of managing them and their resources. In addition, where the public interest requires the disposition of federal timber by competitive bidding, prospective bidders must have an opportunity to reach the timber to be sold. Likewise, where other timber is committed by cooperative agreement to coordinated administration with timber of the United States, there must be access to both.

(d) Accordingly, to the extent that in the judgment of the authorized officer it appears necessary to accomplish these purposes, when the United States, acting through the Bureau of Land Management, grants a right-of-way across O. and C. lands to a private operator, the private operator will be required to grant to the United States for use by it and its licensees:

(1) Rights-of-way across lands controlled directly or indirectly by him;

(2) The right to use, to the extent indicated in §§ 2812.3-5 and 2812.3-6, any portions of the road system or rights-of-way controlled directly or indirectly by the private operator which is adequate or can economically be made adequate to accommodate the probable normal requirements of both the operator and of the United States and its licensees, and which form an integral part of or may be added to the road system with which the requested right-of-way will connect;

(3) The right to extend such road system across the operator's lands to reach federal roads or timber; and

(4) In addition, in the limited circumstances set forth in § 2812.3-2 of this subpart the right to use certain other roads and rights-of-way. The permit will describe by legal subdivisions the lands of the operator as to which the United States receives rights. In addition, the extent and duration of the rights received by the United States will be specifically stated in the permit and ordinarily will embrace only those portions of such road system, rights-of-way and lands as may be actually needed for the management and removal of federal timber, or other timber committed by a cooperative agreement to coordinated administration with timber of the United States.

(e) When the United States or a licensee of the United States uses any portion of a permittee's road system for the removal of forest products, the permittee will be entitled to receive just compensation, including a fair share of the maintenance and amortization charges attributable to such road, and to prescribe reasonable road operating rules, in accordance with §§ 2812.3-7 to 2812.4-4.

(f) As some examples of how this policy would be applied in particular instances, the United States may issue a permit under Subpart 2812 without requesting any rights with respect to roads, rights-of-way or lands which the authorized officer finds will not be required for management of or access to federal timber, or timber included in a cooperative agreement. Where, however, the authorized officer finds that there is a road controlled directly or indirectly by the applicant, which will be needed for such purposes and which he finds either has capacity to accommodate the probable normal requirements both of the applicant and of the Government and its licensees, or such additional capacity can be most economically provided by an investment in such road system by the Government rather than by the construction of a duplicate road, he may require, for the period of time during which the United States and its licensees will have need for the road, the rights to use the road for the marketing and management of its timber and of timber included in a cooperative agreement in return for the granting of rights-of-way across O. and C. lands, and an agreement that the road builder will be paid a fair share of the cost of the road and its maintenance. Where it appears to the authorized officer that such a road will not be adequate or cannot economically be enlarged to handle the probable normal requirements both of the private operator and of the United States and its licensees, or even where the authorized officer has reasonable doubt as to such capacity, he will not request rights over such a road. Instead, the Bureau will make provision for its own road system either by providing in its timber sale contracts that in return for the road cost allowance made in fixing the appraised value of the timber, timber purchasers will construct or extend a different road system, or by expending for such construction or by extension monies appropriated for such purposes by the Congress, or, where feasible, by using an existing duplicating road over which the Government has obtained road rights. In such circumstances, however, road cost and maintenance allowances made in the stumpage price of O. and C. timber will be required to be applied to the road which the Bureau has the right to use, and thereafter will not in any circumstances be available for amortization or maintenance costs of the applicant's road.

(g) When a right-of-way permit is issued for a road or road system over which the United States obtains rights of use for itself and its licensees, the authorized officer will seek to agree with the applicant respecting such matters as the time, route, and specifications for the future development of the road system involved; the portion of the capital and maintenance costs of the road system to be borne by the timber to be transported over the road system by the United States and its licensees; a formula for determining the proportion of the capacity of the road system which is to be available to the United States and its licensees for the transportation of forest products; and other similar matters respecting the use of the road by the United States and its licensees and the compensation payable therefor. To the extent that any such matter is not embraced in such an agreement, it will be settled by negotiation between the permittee and the individual licensees of the United States who use the road, and, in the event of their disagreement, by private arbitration between them in accordance with the laws of the State of Oregon.

(h) The authorized officer may in his discretion, issue short term right-of-way permits for periods not exceeding three years, subject to one-year extensions in his discretion. Such permits shall specify the volume of timber which may be carried over the right-of-way and the area from which such timber may be logged. The permits shall be revocable by the authorized officer, the State Director, or the Secretary for violation of their terms and conditions or of these regulations or if hazardous conditions result from the construction, maintenance or use of the rights-of-way by the permittees or those acting under their authority. As a condition for the granting of such permits, the applicant must comply with §§ 2812.3-1 and 2812.3-3 of this subpart to the extent that rights-of-way and road use rights are needed to remove government timber offered for sale in the same general area during the period for which the short term right-of-way is granted.

(i) The authorized officer may, in his discretion, issue to private operators rights-of-way across O. and C. lands, needed for the conduct of salvage operations, for a period not to exceed five years. A salvage operation as used in this paragraph means the removal of trees injured or killed by windstorms, insect infestation, disease, or fire, together with any adjacent green timber needed to make an economic logging show. As a condition of the granting of such rights-of-way, the operator will be required, when the authorized officer deems it necessary, to grant to the United States and its licensees for the conduct of salvage operations on O. and C. lands for a period not to exceed five years, rights-of-way across lands controlled directly or indirectly by him and to grant the right to use to the extent indicated in §§ 2812.3-5 and 2812.3-6 any portions of the road system controlled directly or indirectly by the private operator which is adequate or can economically be made adequate to accommodate the requirements of both the operator and of the United States and its licensees.

[35 FR 9637, June 13, 1970, as amended at 41 FR 21642, May 27, 1976]

§ 2812.0-7 Cross Reference.

For disposal of timber or material to a trespasser, see § 9239.0-9 of this chapter.

§ 2812.1 Application procedures.

§ 2812.1-1 Filing.

(a) An application for a permit for a right-of-way over the O. and C. lands must be submitted in duplicate on a form prescribed by the Director and filed in the appropriate district office. Application forms will be furnished upon request.

(b) Any application filed hereunder, including each agreement submitted by the applicant as a part thereof or as a condition precedent to the issuance of a permit, may be withdrawn by the applicant by written notice delivered to the authorized officer prior to the time the permit applied for has been issued to, and accepted by, the applicant.

[35 FR 9637, June 13, 1970, as amended at 41 FR 21642, May 27, 1976]

§ 2812.1-2 Contents.

(a) An individual applicant and each member of any unincorporated association which is an applicant must state in the application whether he is a native born or a naturalized citizen of the United States. Naturalized citizens will be required to furnish evidence of naturalization pursuant to the provisions of § 2802.1-4.

(b) An application by a private corporation must be accompanied by two copies of its articles of incorporation, one of which must be certified by the proper official of the company under its corporate seal, or by the secretary of the State where organized. A corporation organized in a State other than Oregon must submit a certificate issued by the State of Oregon attesting that the corporation is authorized to transact business within that State. The requirements of this paragraph shall be deemed satisfied if the corporation, having once filed the required documents, makes specific reference to the date and case number of such previous applications, states what changes, if any, have been made since the prior filings, and includes a statement that the right of the company to do business in the State of Oregon has not lapsed or terminated.

(c) Where the application is for a right-of-way on any portion of which the applicant proposes to construct a road, it must be accompanied by two copies of a map prepared on a scale of 4 inches or 8 inches to the mile. Showing the survey of the right-of-way so that it may be accurately located on the ground. The map should comply with the following requirements, except as the authorized officer may waive in any particular instance all or any of such requirements:

Courses and distances of the center line of the right-of-way should be given; the courses referred to the true meridian and the distance in feet and decimals thereof. The initial and terminal points of the survey must be accurately connected by course and distance to the nearest readily identifiable corner of the public land surveys, or, if there be no such corner within two miles, then connected to two permanent and prominent monuments or natural objects. All subdivisions of the public lands surveys, any part of which is within the limits of the survey, should be shown in their entirety, based upon the official subsisting plat with subdivisions, section, township, and range clearly marked. The width of the right-of-way should be given; and if not of uniform width, the locations and amount of change must be definitely shown. There shall also be a statement on the face of or appended to the map indicating the grade and usable width of the road to be constructed, the type of material which will be used for the surface, the type and extent of the drainage facilities, and the type of construction and estimated capacity of any bridges. The map should bear upon its face the statement of the person who made the survey, if any, and the certificate of the applicant; such statement and certificate should be as set out in Forms as approved by the Director.

(d) Where the application is for the use of an existing road, a map adequate to show the location thereof will be required, together with a statement of the specific nature and location of any proposed improvements to such road. A blank map suitable for most cases may be procured from the appropriate district forester.

(e) Every application for a right-of-way must also be accompanied by a diagram indicating the roads and rights-of-way which form an integral part of the road system with which the requested right-of-way will connect, the portions of such road system which the applicant directly controls within the meaning of § 2812.0-5(i), the portions thereof which the applicant indirectly controls within the meaning of § 2812.0-5(j), and the portions thereof as to which the applicant has no control within the meaning of such sections. As to the portions over which the applicant has no control, he must furnish a statement showing for the two years preceding the date of the filing of the application, all periods of time that he had direct or indirect control thereof, and the date and nature of any changes in such control. The diagram shall also contain the name of the person whom the applicant believes directly controls any portion of such road system which the applicant does not directly control. Where a right-of-way for a railroad is involved, the applicant must indicate which portions of the right-of-way will be available for use as truck roads upon the removal of the rails and ties and the probable date of such removal. Blank diagram forms, suitable for most cases, may be obtained from the appropriate district forester.

§ 2812.1-3 Trespass.

The mere filing of an application under this paragraph does not authorize the applicant to use the right-of-way in any manner or for any purpose until written permission therefor has been duly executed by the authorized officer and delivered to the applicant. Any unauthorized use of O. and C. land constitutes a trespass for which the trespasser is liable in damages to the United States. Where there has been such a trespass, no permit shall be issued to the alleged trespasser unless:

(a) The trespass claim is fully satisfied; or

(b) The alleged trespasser files a bond conditioned upon payment of the amount of damages found by the State supervisor, or upon appeal by the Secretary of the Interior or his delegatee, to be due the United States; or

(c) The State Director finds in writing that there is a legitimate dispute as to the fact of the alleged trespasser's liability or as to the extent of his liability and the trespasser files a bond guaranteeing payment of the amount found by a court of competent jurisdiction to be due the United States.

§ 2812.2 Nature of permit.

§ 2812.2-1 Nonexclusive license.

Permits for rights-of-way for tramroads, do not constitute easements, and do not confer any rights on the permittee to any material for construction or other purposes except, in accordance with the provisions of §§ 2812.6-2 and 2812.8-3, such materials as may have been placed on such lands by a permittee. The permits are merely nonexclusive licenses to transport forest products owned by the permittee. Such permits may be canceled pursuant to § 2812.8.

§ 2812.2-2 Right of permittee to authorize use by third parties.

A permittee may not authorize other persons to use the right-of-way for the transportation of forest products which are not owned by the permittee. Any person, other than the permittee or a licensee of the United States who desires to use the right-of-way for such purposes, is required to make application therefor and to comply with all the provisions of these regulations relating to applications and applicants: *Provided, however,* That upon the request of a permittee the authorized officer may, with respect to an independent contractor who desires to use such right-of-way for the transportation of forest products owned by such independent contractor and derived from timber or logs acquired by him from such permittee, waive the requirements of this sentence. Where the right-of-way involved has been substantially improved by the holder of an outstanding permit, any subsequent permit issued for the same right-of-way will be conditioned upon the subsequent permittee's agreement while the prior permit is outstanding, to be bound by the road rules of and to pay fair compensation to, the prior permittee, such rules and compensation to be agreed upon by the prior and subsequent permittee in accordance with the procedures and standards established by the regulations in §§ 2812.4-1, 2812.4-3, and 2812.4-4 of this subpart.

§ 2812.2-3 Construction in advance of permit.

The authorized officer may grant an applicant authority to construct improvements on a proposed right-of-way prior to a determination whether the permit should issue. Such advance authority shall not be construed as any representation or commitment that a permit will issue. Upon demand by the authorized officer, the applicant will fully and promptly comply with all the requirements imposed under and by this paragraph. Advance construction will not be authorized unless and until applicant has complied with §§ 2812.1-1, 2812.1-2, 2812.3-1 and 2812.5-1.

§ 2812.3 Right-of-way and road use agreement.

§ 2812.3-1 Rights over lands controlled by applicant.

Where, in the judgment of the authorized officer, it appears necessary in order to carry out the policy set forth in § 2812.0-6, he may require the applicant, as a condition precedent to the issuance of the permit:

(a) To grant to the United States, for use by it and its licensees and permittees, rights-of-way across lands in the O. and C. area directly controlled by the applicant; and as to lands in such area which are indirectly controlled by him, either to obtain such rights for the United States or to make a showing satisfactory to the authorized officer that he has negotiated therefor in good faith and to waive as to the United States, its licensees and permittees any exclusive or restricted right he may have to such lands as are indirectly controlled by him.

(b) In addition, to agree to permit the United States and its licensees, upon the payment of fair compensation as hereinafter provided, to use under the terms and conditions of this paragraph such portion as the applicant directly controls of the road system and rights-of-way which are an integral part of or may be added to the road system with which the right-of-way applied for will connect, and as to the portions of such road system or rights-of-way as the applicant indirectly controls, either to obtain such rights for the United States and its licensees or to make a showing satisfactory to the authorized officer that he has negotiated therefor in good faith and, in such latter circumstance, to waive as to the United States and its licensees any exclusive or restricted right he may have in such portion of the road system and rights-of-way.

§ 2812.3-2 Other roads and rights-of-way controlled by applicant.

In addition to the private road systems and rights-of-way described in § 2812.3-1 in the event the applicant controls directly or indirectly other roads or rights-of-way in any O. and C. area where the authorized officer of the Bureau finds that, as of the time of filing or during the pendency of the application, the United States is unreasonably denied access to its timber for management purposes or where, as of such time, competitive bidding by all prospective purchasers of timber managed by the Bureau in the O. and C. area, or of other Federal timber intermingled with or adjacent to such timber, is substantially precluded by reason of the applicant's control, direct or indirect, of such roads or rights-of-way, the authorized officer may require the applicant to negotiate an agreement granting to the United States and its licensees the right to use, in accordance with the terms and conditions of this paragraph such portion of such roads or rights-of-way as may be necessary to accommodate such management or competitive bidding.

§ 2812.3-3 Form of grant to the United States, recordation.

Any grant of rights to the United States under this section shall be executed on a form prescribed by the Director which shall constitute and form a part of any permit issued upon the application involved. The applicant shall record such agreement in the office of land records of the county or counties in which the roads, rights-of-way, or lands, subject to the agreement are located, and submit evidence of such recordation to the appropriate district manager.

§ 2812.3-4 Where no road use agreement is required.

Where, in the judgment of the authorized officer, it is consistent with the policy set forth in Subpart 2811 he may issue a permit without requesting the applicant to grant any rights to the United States under this paragraph.

§ 2812.3-5 Use by the United States and its licensees of rights received from a permittee.

The use by the United States and its licensees of any of the rights received from a permittee hereunder shall be limited to that which is necessary for management purposes, or to reach, by the most reasonably direct route, involving the shortest practicable use of the permittee's road system, a road or highway which is suitable for the transportation of forest products in the type and size of vehicle customarily used for such purposes and which is legally available for public use for ingress to and the removal of forest products from Government lands or from other lands during such periods of time as the timber thereon may be committed by a cooperative agreement to coordinated administration with timber of the United States. However, the type and size of vehicle which may be used by the licensee on the permittee's road shall be governed by §§ 2812.3-7 and 2812.4-3.

§ 2812.3-6 Duration and location of rights granted or received by the United States.

The rights-of-way granted by the United States under any permit issued under § 2812.6, subject to the provisions of § 2812.7, will be for a stated term or terms which may vary for each portion of the right-of-way granted; such term or terms will normally be coincident with the probable period of use for the removal of forest products by the permittee and any successor in interest of the various portions of the right-of-way requested. In the same manner the permit will also state the duration of the rights of the United States to use and to permit its licensees to use, and the location by legal subdivisions of, each of the various portions, if any, of the roads, rights-of-way, and lands which a permittee hereunder authorizes the United States and its licensees to use; and, similarly, the duration of such rights received by the United States will normally be coincident with the probable period of use for the removal of forest products, by the United States and its existing and prospective licensees, of such roads, rights-of-way, and lands.

§ 2812.3-7 Permittee's agreement with United States respecting compensation and adjustment of road use.

(a) Where the United States receives rights over any road, right-of-way, or lands, controlled directly or indirectly by a permittee, the authorized officer will seek to arrive at an advance agreement with the permittee respecting any or all of such matters as the time, route, and specifications for the development of the road system in the area; the total volume of timber to be moved over such road system, and the proportion of such timber which belongs to the United States or is embraced in a cooperative agreement for coordinated management with timber of the United States managed by the Bureau; the consequent proportion of the capital costs of the road system to be borne by such timber of the United States or embraced in such cooperative agreement; the period of time over, or rate at which, the United States or its licensees shall be required to amortise such capital cost; provisions for road maintenance; the use in addition to the uses set forth in § 2812.3-5 which the United States and its licensees may make of the road system involved, a formula for determining the proportionate capacity of the road system or portions thereof which shall be available to the United States and its licensees for the transportation of forest products; the amount and type of insurance to be carried, and the type of security to be furnished by licensees of the United States who use such road; and such other similar matters as the authorized officer may deem appropriate. To the extent necessary to fulfill the obligations of the United States under any such advance agreement, subsequent contracts for the sale of timber managed by the Bureau and tapped by such road system, and subsequent cooperative agreements for the coordinated management of such timber with other timber, will contain such provisions as may be necessary or appropriate to require such licensees to comply with the terms of the advance agreement. Where such an advance agreement between the United States and the permittee includes provisions relating to the route and specifications for extensions of the road system involved, the authorized officer may agree that upon the filing of proper applications in the future the applicant or his successor in interest shall receive the necessary permits for such road extensions as may cross lands managed by the Bureau: *Provided, however,* That the applicant shall have substantially complied with the terms of such advance agreement and of the outstanding permits theretofore issued to him.

(b) The provisions of § 2812.4 shall not be applicable to any matters embraced in an agreement made pursuant to this section.

§ 2812.4 Arbitration and agreements.

§ 2812.4-1 Agreements and arbitration between permittee and licensee respecting compensation payable by licensee to permittee for use of road.

(a) In the event the United States exercises the rights received from a permittee hereunder to license a person to remove forest products over any road, right-of-way, or lands of the permittee or of his successor in interest, to the extent that such matters are not covered by an agreement under § 2812.3-7 of this subpart, such licensee will be required to pay the permittee or his successor in interest such compepnsation and to furnish him such security, and to carry such liability insurance as the permittee or his successor in interest and the licensee may agree upon. If the parties do not agree, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by § 2812.4-4. During the pendency of such arbitration proceedings the licensee shall be entitled to use the road, right-of-way, or lands involved upon payment, or tender thereof validly maintained, to the permittee of an amount to be determined by the authorized officer and upon the furnishing to the permittee of a corporate surety bond in an amount equal to the difference between the amount fixed by the authorized officer and the amount sought by the permittee. The licensee shall also, as a condition of use in such circumstances, maintain such liability insurance in such amounts covering any additional hazard and risk which might accrue by reason of the licensee's use of the road, as the authorized officer may prescribe.

(b) The arbitrators shall base their award as to the compensation to be paid by the licensee to the permittee or his successor in interest upon the amortization of the replacement costs for a road of the type involved, including in such replacement costs an extraordinary cost peculiar to the construction of the particular road involved and subtracting therefrom any capital investment made by the United States or its licensees in the particular road involved or in improvements thereto used by and useful to the permittee or his successor in interest plus a reasonable interest allowance on the resulting cost figure, taking into account the risk involved, plus costs of maintenance if furnished by the permittee or his successor, including costs of gates and gateman. In arriving at the amortization item, the arbitrators shall take into account the probable period of time, past and present, during which such road may be in existence, and the volume of timber which has been moved and the volume of timber currently merchantable, which probably will be moved from all sources over such road. The arbitrators shall also take into account the extent to which the use which the licensee might otherwise economically make of the road system is limited by § 2812.3-5. In addition, the arbitrators may fix the rate at which payments shall be made by the licensee during his use of the road. The arbitrators shall require the licensee to provide adequate bond, cash deposit, or other security to indemnify the permittee or his successor in interest against failure of the licensee to comply with the terms of the award and against damage to the road not incident to normal usage and for any other reasonable purpose, and also to carry appropriate liability insurance covering any additional hazard and risks which may accrue by reason of the licensee's use of the road.

(c) Where improvements or additions are required to enable a licensee to use a road or right-of-way to remove timber or forest products, the cost of such improvements will be allowable to the licensee.

(d) The full value at current stumpage prices will be allocable against a licensee for all timber to be cut, removed, or destroyed by the licensee on a permittee's land in the construction or improvement of the road involved.

§ 2812.4-2 Compensation payable by United States to permittee for use of road.

In the event the United States itself removes forest products over any road or right-of-way of the permittee or his successor in interest, the United States, if there has been no agreement under § 2812.3-7 covering the matter, shall pay to the permittee or his successor in interest reasonable compensation as determined by the State Director, who shall base his determination upon the same standards established by this paragraph for arbitrators in the determination of the compensation to be paid by a licensee to a permittee: *Provided, however,* That no bond or other security or liability insurance is to be required of the United States. When the United States constructs or improves a road on a permittee's land or right-of-way it shall pay to the permittee the full value at current stumpage prices of all timber of the permittee cut, removed, or destroyed in the construction or maintenance of such road or road improvements. Current stumpage prices shall be determined by the application of the standard appraisal formula, used in appraising O. and C. timber for sale, to the volume and grade of timber. Such volume and grade shall be determined by a cruise made by the permittee or, at his request, by the authorized officer. If either the permittee or the authorized officer does not accept the cruise made by the other, the volume and grade shall be determined by a person or persons acceptable both to the permittee and the State Director.

§ 2812.4-3 Agreements and arbitration between permittee and licensee respecting adjustment of road use.

(a) When the United States exercises the right received under this paragraph to use or to license any person to use a road of a permittee, the permittee or his successor in interest shall not unreasonably obstruct the United States or such licensee in such use. If there has been no agreement under § 2812.3-7 covering such matters, the permittee shall have the right to prescribe reasonable operating regulations, to apply uniformly as between the permittee and such licensee, covering the use of such road for such matters as speed and load limits, scheduling of hauls during period of use by more than one timber operator, coordination of peak periods of use, and such other matters as are reasonably related to safe operations and protection of the road; if the capacity of such road should be inadequate to accommodate the use thereof which such licensee and permittee desire to make concurrently, they shall endeavor to adjust their respective uses by agreement.

(b) If the permittee and such licensee are unable to agree as to the reasonableness of such operating regulations or on the adjustment of their respective uses where the capacity of the road is inadequate to accommodate their concurrent use, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by § 2812.4-4.

(c) The arbitrators may make such disposition of a dispute involving the reasonableness of such operating regulations as appears equitable to them, taking into account the capacity and the construction of the road and the volume of use to which it will be subjected. In the determination of a dispute arising out of the inadequacy of the capacity of a road to accommodate the concurrent use by a permittee and a licensee, the arbitrators may make such disposition thereof as appears equitable to them, taking into account, among other pertinent facts, the commitments of the permittee and the licensee with respect to the cutting and removal of the timber involved and the disposition of the products derived therefrom; the extent to which each of the parties may practicably satisfy any of the aforesaid commitments from other timber currently controlled by him; the past normal use of such road by the permittee; the extent to which federal timber has contributed to the amortization of the capital costs of such road; and the extent to which the United States or its licensees have enlarged the road capacity.

§ 2812.4-4 Arbitration procedure.

(a) Within 10 days after the delivery of a written request for arbitration under § 2812.4-1 or § 2812.4-3 of this subpart each of the parties to the disagreement shall appoint an arbitrator and the two arbitrators thus appointed shall select a third arbitrator. If either party fails to appoint an arbitrator as provided herein, the other party may apply to a court of record of the State of Oregon for the appointment of such an arbitrator, as provided by the laws of such State. If within ten days of the appointment of the second of them, the original two arbitrators are unable to agree upon a third arbitrator who will accept the appointment, either party may petition such a court of record of the State of Oregon for the appointment of a third arbitrator. Should any vacancy occur by reason of the resignation, death or inability of one or more of the arbitrators to serve, the vacancy shall be filled according to the procedures applicable to the appointment of the arbitrator whose death, disability, or other inability to serve, created the vacancy.

(b) By mutual agreement, the parties may submit to a single arbitration proceeding controversies arising under both §§ 2812.4-1 and 2812.4-3.

(c) The arbitrators shall hear and determine the controversy and make, file, and serve their award in accordance with the substantive standards prescribed in §§ 2812.4-1 and 2812.4-3, for the type of controversy involved and in accordance with the procedures established by the laws of the State of Oregon pertaining to arbitration proceedings. A copy of the award shall also be served at the same time upon the authorized officer or the State Director, either personally or by registered mail.

(d) Costs of the arbitration proceedings shall be assessed by the arbitrators against either or both of the parties, as may appear equitable to the arbitrators, taking into account the original contentions of the parties, the ultimate decision of the arbitrators and such other matter as may appear relevant to the arbitrators.

[35 FR 9638, June 13, 1970, as amended at 41 FR 21642, May 27, 1976]

§ 2812.5 Payment to the United States, bond.

§ 2812.5-1 Payment required for O. and C. timber.

An applicant will be required to pay to the Bureau of Land Management, in advance of the issuance of the permit, the full stumpage value as determined by the authorized officer of the estimated volume of all timber to be cut, removed, or destroyed, on O. and C. lands in the construction or operation of the road.

§ 2812.5-2 Payment to the United States for road use.

(a) A permittee shall pay a basic fee of $5 per year per mile or fraction thereof for the use of any existing road or of any road constructed by the permittee upon the right-of-way. If the term of the permit is for 5 years or less, the entire basic fee must be paid in advance of the issuance of the permit. If the term of the permit is longer than 5 years, the basic fee for each 5-year period or for the remainder of the last period, if less than 5 years, must be paid in advance at 5-year intervals: *Provided, however,* That in those cases where the permittee has executed under §§ 2812.3-1 to 2812.3-5 an agreement respecting the use of roads, rights-of-way or lands, no such basic fee shall be paid: *Provided further,* This paragraph shall not apply where payment for road use is required under § 2812.3-1(b).

(b) Where the permittee receives a right to use a road constructed or acquired by the United States, which road is under the administrative jurisdiction of the Bureau of Land Management, the permittee will be required to pay to the United States a fee to be determined by the authorized officer who may also fix the rate at which payments shall be made by the permittee during his use of the road. The authorized officer shall base his determination upon the amortization of the replacement costs for a road of the type involved, together with a reasonable interest allowance on such costs plus costs of maintenance if furnished by the United States and any extraordinary costs peculiar to the construction or acquisition of the particular road. In the case of federally acquired or constructed access roads, an allowance representing a reasonable allocation for recreational or other authorized uses shall be deducted from the replacement costs of the road before the amortization item is computed. A similar allowance and deduction shall be made in cases involving roads constructed as a part of a timber sale contract when, and if, subsequent to completion of such contract any such road becomes subject to recreational or other authorized uses. In arriving at the amortization item, the authorized officer shall take into account the probable period of time, past and present, during which such road may be in existence, and the volume of timber which has been moved, and the volume of timber currently merchantable which probably will be moved from all sources over such road: *Provided, however,* That this subdivision shall not apply where the permittee transports forest products purchased from the United States through the Bureau of Land Management, or where payment for such road use to another permittee is required under this Subpart 2812: *Provided further,* That where the United States is entitled to charge a fee for the use of a road, the authorized officer may waive such fee if the permittee grants to the United States and its licensees the right to use, without charge, permittee's roads of approximately equal value as determined under the methods provided in this subdivision and § 2812.4-1(b), as may be applicable.

(c) If an application is filed to use a road built on O. and C. lands by the applicant or his predecessor in interest under a permit which has expired, the authorized officer may issue a new permit which provides that as to such road the applicant's road use payments shall be determined in accordance with paragraph (b) of this section except that he shall be required to pay a road use fee which is adequate to amortize only his proportionate share of any capital improvements which have been or may be placed on the road by the United States or its licensees together with a reasonable interest allowance thereon plus cost of maintenance if furnished by the United States: *Provided, however,* That if the application is for use of a road which has been built by a predecessor in interest the permit shall provide that the applicant may use the road only for the purpose of reaching the lands of the predecessor in interest that were served by the road. As a condition for the granting of such a permit, the applicant must comply with §§ 2812.3-1 to 2812.3-5 to the extent that rights-of-way and road use rights are needed to manage lands of the United States or to remove timber therefrom.

§ 2812.5-3 Bonds in connection with existing roads.

An applicant for permit or a permittee desiring to use an existing road owned or controlled by the United States, shall prior to such use post a bond on a form prescribed by the Director. The amount of the bond shall be determined by the authorized officer but in no event less than five hundred dollars ($500) per mile or fraction thereof. The bond shall be executed by an approved corporate surety, or the permittee may deposit an equivalent amount in cash or negotiable securities of the United States and the bond shall be conditioned upon compliance with Subpart 2812 and the terms and conditions of the permit.

§ 2812.6 Approval and terms of permit.

§ 2812.6-1 Approval.

(a) Upon the applicant's compliance with the appropriate provisions of this paragraph and if it is determined that the approval of the application will be in the public interest, the authorized officer may, in his discretion, issue an appropriate permit, upon a form prescribed by the Director.

(b) The authorized officer may waive the requirements of §§ 2812.1-2 (c) and (e) and 2812.5-3 in the case of a natural person who applies for a right-of-way for not to exceed a period of twelve weeks. Not more than one such waiver shall be allowed in each consecutive twelve calendar months on behalf of or for the benefit of the same person.

§ 2812.6-2 Terms and conditions of permit.

(a) As to all permits: Every permittee shall agree:

(1) To comply with the applicable regulations in effect as of the time when the permit is issued and, as to the permittee's roads as to which the United States has received rights

under §§ 2812.3-1 to 2812.3-5 with such additional regulations as may be issued from time to time relating to the use of roads for the purpose of access by properly licensed hunters and fishermen and by other recreationalists to lands of the United States in the O. and C. area which are suitable for such recreational purposes, where such use will not unreasonably interfere with the use of the road by the permittee for the transportation of forest products or unduly enhance the risk of fire, collision, or other hazards on such road and on lands in the vicinity thereof. If, notwithstanding the request of the authorized officer that the permittee allow use of a road in conformity with such additional regulations the permittee shall unreasonably withhold his assent, the authorized officer shall refer the disagreement through the proper channels to the Director of the Bureau for his consideration, and, if the Director concurs in the conclusion of the authorized officer and if the matter is still in dispute, he shall refer the matter to the Secretary of the Interior for his consideration. In the event of the Secretary's concurrence in the conclusions of the authorized officer, and if the permittee nevertheless unreasonably withholds such assent, the United States may institute such judicial proceedings as may be appropriate to enforce said regulations.

(2) Not to cut, remove, or destroy any timber not previously purchased on the right-of-way without having first obtained specific authority from the authorized officer and making payment therefor.

(3) To take adequate precaution to prevent forest, brush, and grass fires; to endeavor with all available personnel to suppress any fire originating on or threatening the right-of-way on which a road is being used or constructed by the permittee or any fire caused by the permittee; to do no burning on or near the right-of-way without State permit during the seasons that permits are required and in no event to set fire on or near the right-of-way that will result in damage to any natural resource or improvement.

(4) To submit to arbitration proceedings and to be bound by the resulting arbitral awards, pursuant to §§ 2812.4-1, 2812.4-3, and 2812.4-4.

(5) In the event that the United States acquires by purchase or eminent domain the land or any interest therein, over which there passes a road which the United States has acquired the right to use under §§ 2812.3-1 to 2812.3-5 of this paragraph to waive compensation for the value of the road, equivalent to the proportion that the amount the United States has contributed bears to the total actual cost of construction of the road. Such contribution shall include any investment in or amortization of the cost of such road, or both, as the case may be, made by the United States or a licensee either by way of direct expenditures upon such road, or by way of payment by the United States or a licensee to the permittee, or by way of allowance made by the United States to the permittee in any timber sales contract for such amortization or capital investment.

(6) To construct all roads and other improvements as described in the application for the permit, except as the authorized officer may authorize modification or abandonment of any such proposed construction.

(7) To use the permit and right-of-way afforded subject to all valid existing rights, to such additional rights-of-way as may be granted under this paragraph to a reservation of rights-of-way for ditches and canals constructed under authority of the United States.

(8) Not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and to require an identical provision to be included in all subcontracts.

(9) Except as the authorized officer may otherwise permit or direct to clean up and remove from the road and right-of-way within six months after the expiration or other termination of the permit, all debris, refuse, and waste material which may have resulted from his operations and use of said road; to repair all damage to said road resulting directly or indirectly from his use thereof; and to remove

therefrom all structures, timbers, and other objects that may have been installed or placed thereon by him in connection with said operations or use; *Provided, however*, That the road and all usable road improvements shall be left in place.

(10) Upon request of an authorized officer, to submit to the Bureau within 30 days with permission to publish, the detailed terms and conditions, including the fee which the permittee will ask as a condition of such licensee's use for the removal of forest products over any road or right-of-way which the United States and its licensees have acquired a right to use under §§ 2812.1-3 to 2812.1-5.

(11) To grant to the United States, upon request of an authorized officer in lieu of the rights-of-way across legal subdivisions granted pursuant to §§ 2812.1-3 to 2812.1-5, such permanent easements on specifically described locations as may be necessary to permit the Bureau to construct roads on such legal subdivisions with appropriated funds: *Provided*, That at the time of the grant of such permanent easements the Bureau shall release, except for necessary connecting spur roads, the rights-of-way across such legal subdivisions previously granted: *Provided further*, That if the United States builds a road on such permanent easements it shall pay for any timber of the permittee which is cut, removed, or destroyed in accordance with § 2812.4-2. The authorized officer shall waive the requirement under this paragraph, however, if the permittee makes a satisfactory showing to the authorized officer that he does not own a sufficient interest in the land to grant a permanent easement, and that he has negotiated therefor in good faith without success.

(b) As to permits for the use of an existing road: In addition, every permittee to whom a permit is issued for the use of an existing road is required to agree:

(1) To maintain such a road in an adequate and satisfactory condition or to arrange therefor with the other users of the road. In the absence of satisfactory performance, the authorized officer may have such maintenance work performed as may be necessary in his judgment, determine the proportionate share allocable to each user, and collect the cost thereof from the parties or the sureties on the bonds furnished by said parties.

(2) Upon the expiration or other termination of his right to its use, to leave said road and right-of-way in at least as good a condition as existed prior to the commencement of his use.

§ 2812.7 Assignment of permit.

Any proposed assignment of a permit must be submitted in duplicate, within 90 days after the date of its execution, to the authorized officer for approval, accompanied by the same showing and undertaking by the assignee as is required of an applicant by §§ 2812.1-2 and 2812.3-1 to 2812.3-5, and must be supported by a stipulation that the assignee agrees to comply with and be bound by the terms and conditions of the permit and the applicable regulations of the Department of the Interior in force as of the date of such approval of the assignment.

[35 FR 9638, June 13, 1970, as amended at 41 FR 21642, May 27, 1976]

§ 2812.8 Cause for termination of permittee's rights.

§ 2812.8-1 Notice of termination.

(a) The authorized officer in his discretion may elect upon 30 days' notice to terminate any permit or right-of-way issued under this paragraph if:

(1) In connection with the application made therefor, the applicant represented any material fact knowing the same to be false or made such representation in reckless disregard of the truth; or

(2) A permittee, subsequent to the issuance of a permit or right-of-way to him, represents any material fact to the Bureau, in accordance with any requirement of such permit or this paragraph, knowing such representation to be false, or makes such representation in reckless disregard of the truth.

(b) The authorized officer in his discretion may elect to terminate any permit or right-of-way issued under this paragraph, if the permittee shall fail to comply with any of the provisions of such regulations or make defaults in the performance or obligation of any of the conditions of the permit, and such failure or default shall continue for 60 days after service of written notice thereof by the authorized officer.

(c) Notice of such termination shall be served personally or by registered mail upon the permittee, shall specify the misrepresentation, failure or default involved, and shall be final, subject, however, to the permittee's right of appeal.

(d) Termination of the permit and of the right-of-way under this section shall not operate to terminate any right granted to the United States pursuant to this paragraph, nor shall it affect the right of the permittee, after the termination of his permit and right-of-way to receive compensation and to establish road operating rules with respect to roads controlled by him which the United States has the right to use and to permit its licensees to use; nor shall it relieve the permittee of his duty under this paragraph, to submit to and be bound by arbitration pursuant to §§ 2812.4-1, 2812.4-3, and 2812.4-4.

§ 2812.8-2 Remedies for violations by licensee.

(a) No licensee of the United States will be authorized to use the roads of a permittee except under the terms of a timber sale contract or a cooperative agreement with the United States which will require the licensee to comply with all the applicable provisions of this paragraph, and any agreements or awards made pursuant thereto. If a licensee fails to comply with the regulations, agreements, or awards, the authorized officer will take such action as may be appropriate under the provisions of the timber sale contract or cooperative agreement.

(b) A permittee who believes that a licensee is violating the provisions of such a timber sale contract or cooperative agreement pertaining to use of the permittee's roads, rights-of-way, or lands, may petition the authorized officer, setting forth the grounds for his belief, to take such action against the licensee as may be appropriate under the contract or the cooperative agreement. In such event the permittee shall be bound by the decision of the authorized officer, subject, however, to a right of appeal pursuant to § 2812.9 and subject, further, to the general provisions of law respecting review of administrative determinations. In the alternative, a permittee who believes that a licensee has violated the terms of the timber sale contract or cooperative agreement respecting the use of the permittee's roads may proceed against the licensee in any court of competent jurisdiction to obtain such relief as may be appropriate in the premises.

§ 2812.8-3 Disposition of property on termination of permit.

Upon the expiration or other termination of the permittee's rights, in the absence of an agreement to the contrary, the permittee will be allowed 6 months in which to remove or otherwise dispose of all property or improvements, other than the road and usable improvements to the road, placed by him on the right-of-way, but if not removed within this period, all such property and improvements shall become the property of the United States.

§ 2812.9 Appeals.

An appeal pursuant to Part 4 of 43 CFR Subtitle A, may be taken from any final decision of the authorized officer, to the Board of Land Appeals, Office of the Secretary.

[41 FR 29123, July 15, 1976]

PART 2820—ROADS AND HIGHWAYS

Subpart 2821—Under Title 23, U.S.C. (Interstate and Defense Highway System)

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Subpart 2821—Under Title 23, U.S.C. (Interstate and Defense Highway System)

SOURCE: 35 FR 9645, June 13, 1970 unless otherwise noted.

§ 2821.0-3 Authority.

(a) Title 23, United States Code, section 107, paragraph (d), provides that whenever rights-of-way, including control of access, on the National System of Interstate and Defense Highways are required over lands or interests in lands owned by the United States, the Secretary of Transportation may make such arrangements with the agency having jurisdiction over such lands as may be necessary to give the State or other person constructing the projects on such lands adequate rights-of-way and control of access thereto from adjoining lands. It directs any such agency to cooperate with the Secretary of Transportation in this connection.

(b) Title 23, United States Code, section 317, provides that:

(1) If the Secretary of Transportation determines that any part of the lands or interests in lands owned by the United States is reasonably necessary for the right-of-way of any highway constructed on the Federal-aid primary system, the Federal-aid secondary system and the National System of Interstate and Defense Highways, or under Title 23, United States Code, Chapter 2, or as a source of materials for the construction or maintenance of any such highway adjacent to such lands or interests in lands, the Secretary of Transportation shall file with the Secretary of the Department supervising the administration of such lands or interests in lands a map showing the portion of such lands or interests in lands which it is desired to appropriate.

(2) If within a period of 4 months after such filing the Secretary of such department shall not have certified to the Secretary of Transportation that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purposes for which such lands or materials have been reserved or shall have agreed to the appropriation and transfer under conditions which he deems necessary for the adequate protection and utilization of the reserve, then such lands and materials may be appropriated and transferred to the State highway department or its nominee, for such purposes and subject to the conditions so specified.

§ 2821.1 Extent of grant.

By decision of the Secretary, Nevada Department of Highways, A.24151, September 1945, it was held that the law imports discretion and indicates no intent to vest in the State a right at the end of the four months' period without further action by the Department having jurisdiction. It was held further that the interest transferred under the statute is merely a right-of-way or right to take materials and that the Government may reserve the right to dispose of leasable minerals.

§ 2821.2 Termination of right-of-way no longer needed.

If at any time the need for any such lands or materials for such purposes shall no longer exist, notice of the fact shall be given by the State highway department to the Secretary of Transportation and such lands or materials shall immediately revert to the control of the Secretary of the Department from which they had been appropriated. Notice by the State highway departments, that the need for the land or material no longer exists may be given directly to the Bureau which granted the rights.

§ 2821.3 Applications.

§ 2821.3-1 General.

Except where an application involves lands wholly within an Indian reservation applications for rights-of-way and material sites under Title 23, United States Code, for lands under the jurisdiction of the Department of the Interior, together with four copies of a durable and legible map shall be filed by the appropriate State highway department in the manner prescribed by § 2802.1. Maps should accurately describe the land or interest in land desired, showing the survey of the right-of-way, properly located with respect to the public land surveys so that said right-of-way may be accurately located on the ground by any competent, engineer or land surveyor. The map should comply with the requirements of § 2802.1-5(a). Applications for lands wholly within an Indian reservation shall be filed in the office of the superintendent of Indian Affairs agency which has jurisdiction over the lands, or for lands for which there is no agency, in the office of the Area Director who has jurisdiction over the lands. Applications for lands administered by the National Park Service shall be filed with the Director of the National Park Service, Washington, D.C. 20240, and applications for lands administered by the Fish and Wildlife Service shall be filed with the appropriate Regional Director of the Bureau of Sport Fisheries and Wildlife, both of whom, notwithstanding the provisions of subparagraphs (3) and (4) of this paragraph, shall process such applications and issue grants of rights-of-way in accordance with the regulations of this subpart. Applications for lands outside of the jurisdiction of the Department of the Interior shall be filed pursuant to the rules or regulations of the Department or agency having jurisdiction over the lands.

[35 FR 10660, July 1, 1970]

§ 2821.3-2 Consultation with local Bureau officials, program values.

When the lands involved are under the jurisdiction of the Department of the Interior an applicant will be expected, at the earliest possible date prior to the filing of an application, to consult with the local officials of the Bureau or Office having jurisdiction over the lands to ascertain whether or not the use or appropriation of the lands for right-of-way purposes is consistent with the management program and to agree to such measures as may be necessary to maintain program values. Failure to do so may lead to an unresolvable conflict of interest and necessitate disallowance of the application.

§ 2821.3-3 Concurrence by Federal Highway Administration.

The appropriate State highway department will forward a copy of each application and map filed with the Department of the Interior to the authorized officer of the Federal Highway Administration for a determination whether the lands and interests in lands are necessary for the purposes of Title 23, United States Code.

[41 FR 29123, July 15, 1976]

§ 2821.4 Approval.

After receipt of such determination that the lands or interests in lands under application are reasonably necessary for the purposes of Title 23, United States Code, the authorized officer of the Bureau of Land Management will notify the applicant and the authorized officer of the Bureau of Public Roads either (a) that the approval of the application would be contrary to the public interest or inconsistent with the purposes for which the lands or materials have been reserved or (b) that he proposes to grant the right-of-way under the regulations of this part, subject to said regulations and to such conditions which he indicates in his notice.

§ 2821.5 Terms and conditions of allowance.

Grants of rights-of-way under Title 23, United States Code, by the authorized officer of the Bureau of Land Management will be made to the appropriate State highway department or to its nominee and based upon considerations of adequate protection and utilization of Federal lands and interests in lands will be subject to (a) all the pertinent regulations of this part except those which the authorized officer, upon formal request of the applicant may modify or dispense with, in whole or in part, upon a finding that it is in the public interest and in conformity with the purposes of Title 23, United States Code, and (b) any conditions which he deems necessary. Grants of highway rights-of-way under this subpart may include an appropriation and release to the State or its nominee of all rights of the United States, as owner of underlying and abutting lands, to cross over or gain access to the highway from its lands crossed by or abutting the right-of-way, subject to such terms and conditions and for such duration as the authorized officer of the Bureau of Land Management deems appropriate.

§ 2821.6 Additional rights-of-way within highway rights-of-way.

A right-of-way granted under this subpart confers upon the grantee the right to use the lands within the right-of-way for highway purposes only. Separate application must be made under pertinent statutes and regulations in order to obtain authorization to use the lands within such rights-of-way for other purposes. Additional rights-of-way will be subject to the highway right-of-way. Future relocation or change of the additional right-of-way made necessary by the highway use will be accomplished at the expense of the additional right-of-way grantee. Prior to the granting of an additional right-of-way the applicant therefor will submit to the Authorized Officer a written statement from the highway right-of-way grantee indicating any objections it may have thereto, and such stipulations as it considers desirable for the additional right-of-way.

[39 FR 39440, Nov. 7, 1974]

§ 2821.6-1 General.

No application under the regulations of this part is required for a right-of-way within the limits of a highway right-of-way granted pursuant to Title 23, United States Code, for facilities usual to a highway, except (a) where terms of the grant or a provision of law specifically requires the filing of an application for a right-of-way, (b) where the right-of-way is for electric transmission facilities which are designed for operation at a nominal voltage of 33 KV or above or for conversion to such operation, or (c) where the right-of-way is for oil or gas pipelines which are part of a pipeline crossing other public lands, or if not part of such a pipeline, which are more than two miles long. When an application is not required under the provisions of this paragraph, qualified persons may appropriate rights-of-way for such usual highway facilities with the consent of the holder of the highway right-of-way, which holder will be responsible for compliance with § 2801.1-5, in connection with the construction and maintenance of such facilities.

§ 2821.6-2 Terms of grant.

Except as modified by § 2821.6-1 of this subpart, rights-of-way within the limits of a highway right-of-way granted pursuant to Title 23, United States Code, and applications for such rights-of-way, are subject to all the regulations of this part pertaining to such rights-of-way.

(43 U.S.C. 1371)

PART 2880—RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT

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Subpart 2887—Over Lands Subject to Mineral Lease

2887.0-3 Authority.

AUTHORITY: 30 U.S.C. 185; unless otherwise noted.

SOURCE: 44 FR 58129, Oct. 9, 1979, unless otherwise noted.

Subpart 2880—Oil and Natural Gas Pipelines and Related Facilities, General

§ 2880.0-3 Authority.

The provisions of this subpart are issued under the authority of Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), unless otherwise noted.

§ 2880.0-5 Definitions.

As used in this part, the term:

(a) "Act" means Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185).

(b) "Agency head" means the head of any Federal department or independent Federal office or agency, other than the Secretary of the Interior, who has jurisdiction over the surface of Federal lands.

(c) "Applicant" means any individual, partnership, corporation, association, or other business entity, or any State or local governmental entity or agency, which applies for a right-of-way grant or temporary use permit under the Act.

(d) "Authorized officer" means any employee of the department of the Interior to whom has been delegated the authority to perform the duties described in this part.

(e) "Federal lands" means all lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf.

(f) "Holder" means any individual, partnership, corporation, association, or other business entity, or any State or local governmental entity or agency which has received a right-of-way grant or temporary use permit under the Act.

(g) "Oil or gas" means oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom.

(h) "Temporary use permit" means a revocable nonpossessory privilege to use specified Federal lands in the vicinity of a right-of-way in connection with the construction, operation, maintenance, or termination of a pipeline or for the protection of the natural environment or public safety.

(i) "Pipeline" means a line of traversing Federal lands for transportation of oil or gas. The term includes feeder lines, trunk lines, and related facilities, but does not include a lessee's or lease operator's production facilities located on his lease.

(j) "Pipeline system" means all facilities, whether or not located on Federal lands, used by a holder in connection with the construction, operation, maintenance, or termination of a pipeline.

(k) "Production facilities" means a lessee's or lease operator's pipes and equipment used on his lease solely to aid in his extraction, storage, and processing of oil and gas. The term includes storage tanks and processing equipment, and gathering lines upstream from such tanks and equipment, or in the case of gas, upstream from the point of delivery. The term also includes pipes and equipment, such as water and gas injection lines, used in the production process for purposes other than carrying oil and gas downstream from the wellhead.

(l) "Related facilities" means those structures, devices, improvements, and sites, the substantially continuous use of which is necessary for the operation or maintenance of a pipline, which are located on Federal lands, and which are authorized under the Act, including but not limited to: Supporting structures; airstrips; roads; campsites; pump stations, including associated heliports, structures, yards, and fences; valves, and other control devices; surge and storage tanks; bridges; monitoring and communication devices and structures housing them; terminals, including structures, yards, docks, fences, and storage tank facilities; retaining walls, berms, dikes, ditches, cuts, and fills; structures and areas for storing supplies and equipment. Related facilities may be connected or nonconnected or contiguous or noncontiguous to the pipe.

(m) "Right-of-way" means the Federal land authorized to be occupied pursuant to a right-of-way grant.

(n) "Right-of-way grant" means a document authorizing a nonpossessory, nonexclusive right to use Federal lands for the limited purpose of construction, operation, maintenance, and termination of a pipeline.

(o) "Secretary" means the Secretary of the Interior.

[44 FR 58129, Oct. 9, 1979, as amended at 45 FR 59880, Sept. 11, 1980]

§ 2880.0-7 Scope.

(a) These regulations apply to any application now on file or hereafter filed with Federal agencies for issuance, modification, or renewal of a right-of-way grant or a temporary use permit, except where the surface of the Federal lands involved in the right-of-way or temporary use permit area is under the jurisdiction of a single Federal agency, including bureaus and agencies within the Department of the Interior, other than the Bureau of Land Management.

(b) In addition, the provisions of § 2883.5 of this title apply to all right-of-way grants and temporary use permits heretofore issued pursuant to section 28 of the Mineral Leasing Act by the Bureau of Land Management, and to permits, grants, and other authorizations heretofore issued by the Secretary or his delegate in connection with the Trans-Alaska Oil Pipeline System (TAPS).

(c) The regulations of this part do not apply to the reservation of rights-of-way for Federal departments or agencies. Such rights-of-way shall be reserved in accordance with the regulations in Subpart 2800 of this title.

Subpart 2881—Terms and Conditions of Right-of-Way Grants and Temporary Use Permits

§ 2881.1 Nature of interest.

§ 2881.1-1 Nature of right-of-way interest.

(a) The United States retains a right to use a right-of-way and temporary use permit area or authorize the use of it to others in any manner not inconsistent with pipeline construction, operation, maintenance, and termination. The holder of a right-of-way grant or temporary use permit has no right to any of the products of the land including, but not limited to, timber, forage, mineral, and animal resources. The holder may not allow the use of a right-of-way or temporary use permit area by others except its contractors, subcontractors, employees, agents or servants for purposes of construction, operation, maintenance, or termination of the pipeline.

(b) A holder shall not use a right-of-way and temporary use permit area for any purpose other than for the construction, operation, maintenance, and termination of the pipeline specified in the holders right-of-way grant. A holder shall not locate or construct any other pipelines, including looping lines, or other improvements within a right-of-way without first securing appropriate authorization therefor.

(c) The width of a right-of-way shall not exceed 50 feet plus the ground occupied by the pipeline (that is, the pipe and related facilities) unless the authorized officer finds and records the reasons for his finding, that a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety.

(d) An applicant may apply to the authorized officer for a wider right-of-way in limited areas, if necessary:

(1) For the operation and maintenance of the project after construction;

(2) To protect the environment; or

(3) To provide for the public safety. If the authorized officer finds that the additional width is necessary for one of the above reasons, he may authorize a wider width. Such authorization shall include a written report recording the reasons why the additional width is necessary.

(e) A right-of-way grant issued or renewed under these regulations shall be limited to a reasonable term, not to exceed 30 years. No term shall be longer than is necessary to accomplish the purpose of the grant. The authorized officer shall determine the duration of each right-of-way grant, taking into consideration, among other things:

(1) The cost of the facility,

(2) Its useful life,

(3) Any public purpose it serves, and

(4) Potentially conflicting uses of the land.

(f) Except where a right-of-way grant has terminated by its terms upon the occurrence of a fixed or agreed upon condition, event, or time, it shall be renewed if the pipeline is being operated and maintained in accordance with all provisions of the right-of-way grant, these regulations and the Act. The authorized officer may modify the terms and conditions of the right-of-way grant at the time of renewal.

(g) No purported transfer of an interest in a right-of-way grant, a right-of-way, or any portion of a pipeline system located within a right-of-way, shall be valid without the prior written approval of the authorized officer. Applications for such approval shall be directed to the authorized officer. A transferee shall meet all the requirements of an original pipeline right-of-way grantee is bound by and shall assume all of the transferor's responsibility to the United States with respect to the transferred interest and shall agree to be bound by all terms of any outstanding right-of-way grant or temporary use permit. Applications for a transfer of interest shall be accompanied by a nonrefundable fee of $50.

§ 2881.1-2 Nature of temporary use permit interest.

(a) A temporary use permit does not grant any interest in land and is revocable at will by the authorized officer.

(b) The area covered by a temporary use permit shall be no greater than is necessary to accommodate the authorized use or to protect the environment or provide for public safety.

(c) The duration of a temporary use permit shall be determined by the authorized officer in a manner that is consistent with construction activities, and is not to exceed that length of time needed to accomplish the purpose for which the permit is sought. The term of a temporary use permit shall not exceed 3 years subject to the provisions of § 2881.1-2 of this title.

(d) A temporary use permit may be renewed at the discretion of the authorized officer, but the permittee has no right of renewal. The authorized officer may modify the terms and conditions of the temporary use permit at the time of renewal.

(e) A temporary use permit may be assigned at the discretion of the authorized officer, provided the use for which the permit was issued continues.

§ 2881.1-3 Reservation of rights to the United States.

All rights in Federal lands subject to a right-of-way grant or temporary use permit not expressly granted are retained by the United States. These rights include, but are not limited to:

(a) A continuing right of access across right-of-way and temporary use permit areas to all Federal lands (including the subsurface and air space);

(b) A continuing right of physical entry to any part of the pipeline system for inspection, monitoring, or for any other purpose or reason consistent with any right or obligation of the United States under any law or regulation; and

(c) The right to make, issue, or grant right-of-way grants, temporary use permits, easements, leases, licenses, contracts, patents, permits and other authorizations to or with third parties for compatible uses on, under, above, or adjacent to the Federal lands subject to a right-of-way grant or temporary use permit.

§ 2881.2 Terms and conditions of interest granted.

(a) An applicant, by accepting a right-of-way grant or a temporary use permit, agrees and consents to comply with and be bound by the following terms and conditions, excepting those which the Secretary may waive in a particular case:

(1) To the extent practicable, all State and Federal laws applicable to the pipeline system construction, operation and maintenance which is authorized and all such additional State and Federal law, along with the implementing regulations, that may be enacted and issued during the term of the grant or permit;

(2) That the pipeline and related facilities be subject to the express covenant that they will be modified, adapted or discontinued within the provisions of the Act and without liability to the United States, if found by the Secretary that the use of the land for pipeline and related facility purposes conflicts with any future proposed use or occupancy of the land when it is determined that the proposal will better serve the national interest;

(3) That in the construction, operation and maintenance of the pipeline and related facilities, there shall be no discrimination against any employee or applicant for employment because of race, creed, color, sex or national origin and all subcontracts shall include an identical provision;

(4) To build and repair roads, fences and trails that may be destroyed or damaged by construction, operation or maintenance of the pipeline and related facilities and to build and maintain suitable crossings for roads and trails that intersect the right-of-way and related facilities; and

(5) To do everything reasonably within his or her power, both independently and upon request of the authorized officer, to prevent and suppress fires on or near the right-of-way and related facilities. This includes making available such construction and maintenance forces as may be reasonably obtained for the suppression of fires.

(b) All right-of-way grants and temporary use permits issued, renewed, or amended under these regulations shall contain such terms, conditions, and stipulations as may be prescribed by the authorized officer regarding extent, duration, survey, location, construction, operation, maintenance, use, and termination. The authorized officer shall impose stipulations which shall include, but shall not be limited to:

(1) Requirements for restoration, revegetation, and curtailment of erosion of the surface of the land;

(2) Requirements to insure that activities in connection with the right-of-way grant or temporary use permit shall not violate applicable air and water quality standards or related facility siting standards established by or pursuant to applicable Federal and State law;

(3) Requirements designed to control or prevent damage to the environment (including damage to fish and wildlife habitat), damage to public or private property, and hazards to public health and safety; and

(4) Requirements to protect the interests of individuals living in the general vicinity of the right-of-way or temporary use permit area who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes.

(c) Right-of-way grants or temporary use permits issued, renewed, or amended under this title shall include requirements which comply with applicable Federal and State law that will protect the safety and health of pipeline workers and the general public, including, but not limited to, protection against the sudden rupture and slow degradation of the pipeline. Applicants and holders shall design, construct, operate, and maintain all facilities in accordance with applicable Federal and State law governing pipelines and pipeline construction.

§ 2881.3 Unauthorized occupancy.

No holder of a right-of-way grant or temporary use permit shall use or knowingly allow any other person to use the right-of-way or temporary use permit area for any purpose not authorized by the right-of-way grant or temporary use permit. Any person occupying or using Federal lands without authorization may be subject to prosecution under applicable law.

Subpart 2882—Applications

§ 2882.1 Pre-application activity.

(a) Upon determining that a proposed pipeline project is contemplated which would cross Federal lands under the jurisdiction of the Department of the Interior, or 2 or more Federal agencies, the proponent of such project is encouraged to promptly notify the appropriate office identified in § 2882.2-2 of this title or the Secretary.

(b) The authorized officer shall provide guidance to the pipeline project proponent as to:

(1) Routing constraints which exist because of current land status as reflected in land use plans and land status records;

(2) Necessary information to be included in applications for right-of-way grants or temporary use permits;

(3) Qualifications required of applicants; and

(4) Identification of on-the-ground investigations which will require temporary use permits.

(c) No work of any kind in connection with a right-of-way proposal, other than that incurred in the processing of temporary use permits under paragraph (d) of this section shall be undertaken by the authorized officer prior to the filing of an acceptable application together with advance payment as required by § 2803.1-1 of this title. The work that shall not be done includes, but is not limited to, special studies such as environmental analyses, environmental impact statements, engineering surveys, resource inventories, and detailed land record analyses.

(d) No activities, other than casual use, such as, but not limited to, vehicle use on existing roads, sampling, marking of routes, searching, or other similar activities that do not disturb the surface of the lands or require the removal of vegetation, shall be conducted on Federal lands prior to the issuance of a right-of-way grant or a temporary use permit.

[44 FR 58129, Oct. 9, 1979, as amended at 45 FR 64178, Sept. 29, 1980]

§ 2882.2 Requirements for applications for right-of-way grants and temporary use permits.

§ 2882.2-1 Applicant qualifications.

(a) An applicant for a right-of-way grant or temporary use permit shall be a citizen of the United States, an association of such citizens, a corporation organized under the laws of the United States, or of any State thereof, or a State or local government. Aliens may not acquire or hold any direct or indirect interest in rights-of-way, right-of-way grants or temporary use permits, except that they may own or control stock in corporations holding rights-of-way, right-of-way grants or temporary use permits if the laws of their country do not deny similar or like privileges to citizens of the United States. If any appreciable percentage of the stock of a corporation is held by aliens who are citizens of a country denying similar or like privileges to the United States citizens, its application shall be denied. A right-of-way shall not be granted to a minor, but a right-of-way may be granted to legal guardians or trustees of minors in their behalf.

(b) An application by a private corporation shall be accompanied by a copy of its charter or articles of incorporation, duly certified by the proper State official where the corporation was organized and a copy of its bylaws, duly certified by the secretary of the corporation.

(c) A corporation, other than a private corporation, shall file a copy of the law under which it was formed and provide a proof of organization under the same, and a copy of its bylaws, duly certified by the secretary of the corporation.

(d) When a corporation is doing business in a State other than that in which it in incorporated, it shall submit a certificate from the Secretary of State or other proper official of that State indicating that it has complied with the laws of the State governing foreign corporations to the extent required to entitle the company to operate in such State, and that the corporation is in good standing under the laws of that State.

(e) A copy of the resolution by the directors of the corporation or other documents authorizing the filing of the application shall also be filed.

(f) If the corporation has previously filed with the Department the papers required by this subsection, the requirements shall be held to be met if, in making subsequent applications, specific references are made to such previous filing by date, place, and case number, and if there have not been any amendments or revisions of the corporation's charter, articles of incorporation, or bylaws.

(g) If the applicant is a partnership, association, or other unincorporated entity, the application shall be accompanied by a certified copy of the articles of association or other similar document creating the entity, if any. The application shall be signed by each partner or member of the entity, and each shall furnish the evidence of qualification which would be required if the partner or member were applying separately.

(h) If the applicant is a State or local government, or agency or instrumentality thereof, the application shall be accompanied by a statement to the effect and a copy of the law, resolution, order, or other authorization under which the application is made.

(i) Each application by a partnership, corporation, association, or other business entity shall disclose the identity of the participants in the entity and shall include where applicable:

(1) The name, address, and citizenship of each participant (partner, associate or other);

(2) Where the applicant is a corporation, the name, address, and citizenship of each shareholder owning 3-percent or more of each class of shares, together with the number and percentage of any class of voting shares of the entity which each shareholder is authorized to vote; and

(3) The name and address of each affiliate controlled by, or that controls, the entity, either directly or indirectly. Where an affiliate is controlled by the entity, the application shall disclose the number of shares and the percentage of each class of voting stock of that affiliate owned, directly or indirectly, by the entity. If an affiliate controls the entity, the number of shares and the percentage of each class of voting stock of the entity owned, directly or indirectly, by the affiliate shall be included. In the case of an affiliate that directly or indirectly controls the entity, the application shall include the name and address of each participant (partner, associate, or other) in the affiliate or, if the affiliate is a corporation, the name, address and citizenship of each shareholder owning 3 percent or more of all shares together with the number and percentage of each class of voting shares of the entity which each shareholder is entitled to vote.

(j) Applications filed with Federal agencies, such as the Federal Energy Regulatory Commission, to obtain a license, certificate or other authority for a project involving a right-of-way over, upon, under or through Federal lands for an oil and gas pipeline shall be simultaneously filed with the Bureau of Land Management in accordance with the provisions of § 2882.2-3 of this title.

(k) The application shall include facts and attached supporting documents which demonstrate the applicant has the technical and financial capability to construct, operate, maintain and terminate the pipeline for which the right-of-way grant or temporary use permit is requested.

(l) If there are any related right-of-way grant or temporary use permit applications pending, or if the applicant's plans include application for additional pipeline right-of-way grants or temporary use permits, the application for a right-of-way grant or temporary use permit shall so indicate and refer to any previous applications.

§ 2882.2-2 Application filing.

(a) Where the Federal lands involved are under the jurisdiction of the Bureau of Land Management, Department of the Interior, application for a right-of-way grant or temporary use permit or renewal of either shall be filed with the nearest Bureau of Land Management Office that has jurisdiction over the Federal lands involved.

(b) Where the Federal lands involved are under the jurisdiction of two or more agencies of the Department of the Interior, or where the Federal lands involved are under the jurisdiction of one or more agencies of the Department of the Interior and one or more other Federal agencies, or where the Federal lands involved are under the jurisdiction of two or more non-Interior agencies, the initial application for a right-of-way grant or temporary use permit may be filed at the most convenient State Office of the Bureau of Land Management, at locations listed in § 1821.2-1 of this title or at the nearest Bureau of Land Management Office that has jurisdiction over a portion of the Federal lands involved. The Director, Bureau of Land Management will, upon notice of the application by field officials, assign a lead official and notify the applicant where all future communications concerning the project should be directed. All applications for temporary use permits that are filed subsequent to the filing of an application for a right-of-way grant shall be filed with the lead official. Applications for renewal of a right-of-way grant or temporary use permit shall be filed with the lead official.

(c) Where the Federal lands involved are under the jurisdiction of but one Federal agency, including bureaus and agencies within the Department of the Interior other than the Bureau of Land Management, applications for a right-of-way grant or temporary use permit or renewal of either shall be directed to that agency.

[44 FR 58129, Oct. 9, 1979, as amended at 45 FR 34887, May 23, 1980]

§ 2882.2-3 Application content.

(a) Applications for right-of-way grants and temporary use permits shall be filed in a format approved by the Director or appropriate agency head, shall be legible, and shall include the information required by § 2882.2-1 of this title and other information as follows:

(1) The name and legal mailing address of the applicant and, if the applicant is not an individual, the name and legal mailing address of the applicant's agent who is authorized to receive notice of actions pertaining to the application.

(2) A description of the proposed pipeline system, including elements of the project which may be constructed on non-Federal lands. The description shall be in sufficient detail to enable the authorized officer to determine the feasibility of the pipeline, the benefits to the public from the proposed pipeline, the pipeline safeguards, the environmental impacts and whether the proposal complies with these regulations and the Act.

(3) A description of all Federal lands which would be involved in the pipeline system, with a statement identifying the Federal agencies concerned.

[44 FR 58129, Oct. 9, 1979, as amended at 45 FR 34888, May 23, 1980]

§ 2882.2-4 Other data that may be required.

(a) The authorized officer may require additional information necessary to prepare environmental assessments and/or other documents he may require relating to the construction, operation, maintenance, and termination phases of the proposed pipeline system, including, but not limited to:

(1) The effect on soils and mineral resources;

(2) The effect on air quality;

(3) The effect on water quality;

(4) Damages to or changes in vegetation;

(5) Changes in fish and wildlife habitat;

(6) The risk of hazards to public health and safety;

(7) The effect of the proposed pipeline on individuals living in its general vicinity who rely on the fish, wildlife,

and biotic resources of the area for subsistence purposes;

(8) The impacts on archeological, paleontological and historical resources;

(9) The impacts on visual resources;

(10) Alternative pipeline route locations.

(b) If the proposed right-of-way or temporary use permit area is within a Federal reservation, the applicant shall submit additional data as required by the authorized officer to assist the Secretary in determining whether the right-of-way grant or temporary use permit would be inconsistent with the purposes of the reservation.

(c) The authorized officer shall require plans for construction, operation, maintenance and termination of the pipeline system. The plans may include, but not be limited to the following data:

(1) Plans and schedules for construction of all pipeline facilities and estimated construction costs.

(2) Plans for the protection of the environment during construction, operation, maintenance and termination of the pipeline.

(3) Plans for emergency repair of any rupture during operation, containment of effluent and restoration of damage.

(d) The authorized officer shall require the submission of a map of the pipeline either with an application, prior to issuance of a right-of-way grant or within 60 days after completion of construction. An application may be processed before a map is submitted.

(e) The authorized officer shall require the submission of a map of the area to be used with an application for a temporary use permit. The authorized officer may impose the map standards set out in § 2882.2-4(f) of this title for temporary use permits when it is determined to be necessary by the authorized officer.

(f) Maps portraying linear rights-of-way shall, as a minimum, show the following data:

(1) The bearing and distance of the traverse line or the true centerline of the constructed facility.

(2) At least one tie to a public land survey monument, either at the beginning or ending point of the pipeline or related facility on Federal lands. If a public land survey monument is not within a reasonable distance, as determined by the authorized officer, either a relatively permanent manmade structure or monument or a prominent natural feature shall be used.

(3) A tie as provided in paragraph (f)(2) of this section shall occur for each entry upon or exit from Federal lands unless the map shows a continuous location of the pipeline or related facility from the initial entry upon or the final exit from Federal lands.

(4) The exterior limits of the right-of-way or temporary use permit area referenced in distance from the centerline of the pipeline or related facility.

(5) All 40 acre subdivisions or larger areas of each section within which the right-of-way or temporary use area occurs shall be listed by section, township and range.

(6) The scale of the map shall be shown along with a north arrow. The map scale shall be such that all of the required information is legible.

(g) A map portraying non-linear or site-type rights-of-way or temporary use areas shall include, at a minimum, the requirements of paragraph (f)(6) of this section and the following unless waived by the authorized officer:

(1) The bearing and distance of each exterior side of the site.

(2) At least one angle point of the location shall be tied to a public land survey monument as provided in paragraph (f)(2) of this section.

[44 FR 58129, Oct. 9, 1979, as amended at 45 FR 34888, May 23, 1980]

§ 2882.3 Application processing.

(a) The Secretary shall notify the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources promptly upon receipt of an application for a right-of-way grant for a pipeline 24 inches or more in diameter and no right-of-way grant for such a pipeline shall be issued until 60 days (not counting days on which the House of Representatives or the

Senate has adjourned for more than 3 days) after a notice of intention to issue the right-of-way grant, together with the authorized officer's detailed findings as to terms and conditions he proposes to impose, has been submitted to such committees, unless each committee by resolution waives the waiting period.

(b) Upon receipt of an application for a right-of-way grant, the authorized officer shall publish a notice of the application in the FEDERAL REGISTER and an announcement in a newspaper or newpapers having general circulation in the vicinity of the Federal lands affected, or, if in the opinion of the authorized officer, the pipeline impacts are of a minor nature, the notice of application may be waived or published only in a newspaper having general circulation in the area or areas in the vicinity of the affected Federal lands. The notice shall contain a description of the pipeline systems as required in § 2882.2-3(a) (2) and (3) of this title, together with such other information as the authorized officer considers pertinent. The notice shall state where the application and related documents are available for interested persons to review. Copies of the notice shall be sent to the Governor of each State within which the pipeline system may be located, the head of each local government or jurisdiction within which the pipeline system may be located, and each agency head, for review and comment.

(c) Where an application for a right-of-way grant or temporary use permit is incomplete or not in conformity with the Act or these regulations, the authorized officer may reject the application or notify the applicant of the deficiencies and afford the applicant an opportunity to file corrections. Where deficiency notices have not been adequately complied with, the authorized officer may reject the application or notify the applicant of the continuing deficiencies and afford the applicant an opportunity to file corrections.

(d) The authorized officer may require the applicant for a right-of-way grant or temporary use permit to submit such additional information as he deems necessary for review of the application.

(e) An application for a right-of-way grant or temporary use permit which meets the requirements of the Act and of these regulations entitles the applicant only to full review of the application. Such application may be denied if the authorized officer determines that the right-of-way or use applied for would be inconsistent with the purpose to which the Federal lands involved have been committed, or would otherwise not be in the public interest.

(f) The authorized officer shall hold public meetings or hearings on an application for a right-of-way grant or temporary use permit if he determines that such hearings or meetings are appropriate and sufficient public interest exists to warrant the time and expense of such meetings or hearings. Notice of any such meetings or hearings shall be published in the FEDERAL REGISTER and in local newspapers.

(g) If the application involves a right-of-way through Federal lands under the jurisdiction of two or more Federal agencies, the authorized officer shall refer the application to the agency heads for consultation and other appropriate actions.

(h) The authorized officer shall consult with other agencies as to any additional information which should be required from the applicant, conditions or stipulations which should be imposed, and whether the right-of-way grant or temporary use permit should be issued.

(i) No right-of-way grant or temporary use permit over Federal lands under the jurisdiction of two or more Federal agencies and not within the jurisdiction of the agency by which the authorized officer is employed shall be issued or renewed by the authorized officer without the concurrence of the head of the agency administering such Federal lands or his authorized representative.

(j) Where the surface of the Federal lands involved is administered by the Secretary or by two or more Federal agencies, the Secretary may, after consultation with the non-Interior agencies involved, grant or renew a right-of-way or temporary use permit through the Federal lands involved, with or without the concurrence of the heads of the agencies administering such Federal lands. A right-of-way through a Federal reservation shall not be granted if the Secretary determines that it would be inconsistent with the purposes of the reservation.

(k) A right-of-way grant or temporary use permit need not conform to the applicant's proposal, but may contain such modifications, terms, stipulations or conditions including changes in route or site location as the authorized officer considers appropriate.

(l) No right-of-way grant or temporary use permit shall be considered as being in effect until the applicant has accepted its terms, in writing. Written acceptance shall constitute an agreement between an applicant and the United States that, in consideration of the right to use Federal lands, the applicant shall abide by all terms and conditions contained therein and the provisions of applicable laws and regulations.

(m) At the discretion of the authorized officer, a provision may be placed in a right-of-way grant or temporary use permit requiring that no construction or use shall occur until detailed construction or use plans have been submitted to the authorized officer and a notice to proceed has been issued. This requirement may apply to the entire pipeline or segments thereof.

§ 2882.4 Interagency agreements.

The authorized officer may enter into interagency cooperative agreements with the other Federal agencies having jurisdiction over the Federal lands involved in right-of-way grants or temporary use permits applied for and issued under this part.

Subpart 2883—Administration of Rights Granted

§ 2883.1 General requirements.

§ 2883.1-1 Reimbursement of costs.

Reimbursement of costs for application processing and administration of right-of-way grants and temporary use permits shall be made in accordance with § 2803.1-1 of this title.

[44 FR 58129, Oct. 9, 1979, as amended at 45 FR 64178, Sept. 29, 1980]

§ 2883.1-2 Rental payments.

Except as provided in § 2803.1-2 of this title, holders of right-of-way grants and temporary use permits shall pay annually, in advance the fair market rental value of the right-of-way or temporary use permit area as determined by the authorized officer.

[44 FR 58129, Oct. 9, 1979, as amended at 45 FR 64178, Sept. 29, 1980]

§ 2883.1-3 Bonding.

The authorized officer may require a holder of a right-of-way grant or temporary use permit to furnish a bond, or other security satisfactory to him, to secure all or any of the obligations imposed by the right-of-way grant and temporary use permits and applicable laws and regulations.

§ 2883.1-4 Liability.

(a) Except as provided in paragraph (f) of this section holders shall be fully liable to the United States for any damage or injury incurred by the United States in connection with the use and occupancy of the right-of-way or permit area.

(b) Except as provided in paragraph (f) of this section, holders shall be held to a standard of strict liability for any activity within a right-of-way or permit area which the authorized officer determines, in his discretion, presents a foreseeable hazard or risk of damage or injury to the United States. The activities and facilities to which such standard shall apply shall be specified in the right-of-way grant or temporary use permit. Strict liability shall not be imposed for damage or injury resulting primarily from an act of war or the negligence of the United States. To the extent consistent with other laws, strict liability shall extend to costs incurred by the United States for control and abatement of conditions, such as fire or oil spills, which threaten lives, property or the environment, regardless of whether the threat occurs on areas that are under Federal jurisdiction. Stipulations in right-of-way grants and temporary use permits imposing strict liability shall specify a maximum limitation on damages which, in the judgment of the authorized officer, is commensurate with the foreseeable risks or hazards presented. The maximum limitation shall not exceed $1,000,000 for any one event, and any liability in excess of such amount shall be determined by the ordinary rules of negligence of the jurisdiction in which the damage or injury occurred.

(c) In any case where strict liability is imposed and the damage or injury was caused by a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction in which the damage or injury occurred.

(d) Except as provided in paragraph (f) of this section, holders shall be fully liable for injuries or damages to third parties resulting from activities or facilities on lands under Federal jurisdiction, in accordance with the law of the jurisdiction in which the damage or injury occurred.

(e) Except as provided in paragraph (f) of this section, holders shall fully indemnify or hold harmless the United States for liability, damage or claims arising in connection with the use and occupancy of right-of-way or permit areas.

(f) If a holder is a State or local government, or agency or instrumentality thereof, it shall be liable to the fullest extent its laws allow at the time it is granted a right-of-way grant or temporary use permit. To the extent such a holder does not have the power to assume liability, it shall be required to repair damage or make restitution to the fullest extent of its powers at the time of any damage or injury.

(g) All owners of any interest in, and all affiliates or subsidiaries of any holder of a right-of-way grant or temporary use permit, except for corporate stockholders, shall be jointly and severally liable to the United States in the event that a claim cannot be satisfied by a holder.

(h) Except as otherwise expressly provided in this section, the provisions in this section for a remedy is not intended to limit or exclude any other remedy.

(i) If the right-of-way grant or temporary use permit is issued to more than one holder, they shall be jointly and severally liable under this section.

§ 2883.1-5 Common carriers.

(a) Pipelines shall be constructed, operated, and maintained as common carriers. The owners or operators of pipelines shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands. In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported, or purchased.

(b) The common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality. Where natural gas not subject to State regulatory or conservation laws governing its purchase by pipeline companies is offered for sale, each pipeline company shall purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline.

(c) The authorized officer shall require, prior to issuing or renewing a right-of-way grant, that the applicant submit and disclose all plans, contracts, agreements, or other information or material which the authorized officer considers necessary to determine whether a right-of-way grant shall be issued or renewed and the terms and conditions which should be included in the grant. Such information may include, but is not limited to:

(1) Conditions for, and agreements among, owners or operators regarding the addition of pumping facilities, looping, or otherwise increasing the pipeline or terminal's throughput ca-

pacity in response to actual or anticipated increases in demand;

(2) Conditions for adding or abandoning intake, offtake, or storage points or facilities; and

(3) Minimum shipment or purchase tenders.

§ 2883.1-6 Export.

With certain exceptions, domestically produced crude oil transported through a pipeline is subject to the provisions of Section 28(u) of the Mineral Leasing Act of 1920 as amended (30 U.S.C. 185), and the Export Administration Act of 1969 as amended (50 U.S.C. 2401), and may not be exported without Presidential and congressional approval.

§ 2883.2 Holder activity.

(a) The actions of holders of right-of-way grants or temporary use permits shall be regulated by the appropriate agency head having jurisdiction over the Federal lands involved, unless other arrangements are agreed to by the authorized officer and agency head.

(b) An applicant shall promptly notify the authorized officer of any changes in its plans, financial condition, or other factors relevant to the application, and shall modify the application promptly to reflect any such changes. If the requirements of this subsection are not complied with in the opinion of the authorized officer, the application may be rejected.

(c) The holder shall at all times keep the authorized officer informed of his or her address, and in the case of a corporation, of the address of its principle place of business and the names and addresses of its principle officers.

(d) Any proposed change in the route of the pipeline or change in the use of Federal lands under the Act will require an amended or new right-of-way grant or temporary use permit from the authorized officer. Any unauthorized activity may be subject to prosecution under applicable laws.

(e) Holders of pipeline right-of-way grants issued before November 16, 1973, must apply under the Act and these regulations for modifications of the route or change in the use of Federal lands in connection with such right-of-way.

(f) The authorized officer may ratify or confirm a right-of-way grant or temporary use permit that was issued under any provision of law if the right-of-way grant or temporary use permit is modified to comply with the provisions of the Act and regulations. Such modifications are subject to the joint approval of the right-of-way holder and the authorized officer.

§ 2883.3 Construction procedures.

(a) Unless otherwise stated in the right-of-way grant or temporary use permit, construction may proceed immediately after delivery to the authorized officer of the applicant's written acceptance of the right-of-way grant or temporary use permit.

(b) If a notice to proceed requirement has been imposed under § 2882.3(m) of this title, the holder shall initiate no construction, occupancy, or use until the authorized officer issues an appropriate notice to proceed.

§ 2883.4 Operation and maintenance.

Prior to the beginning of pipeline operations, the holder shall submit to the authorized officer a certification of construction, verifying that the pipeline system has been constructed and tested in accordance with the terms of the right-of-way grant, and in compliance with any required plans and specifications, and applicable Federal and State laws and regulations.

§ 2883.5 Immediate temporary suspension of activities.

(a) If the authorized officer determines that any activity being conducted or authorized by a holder within a right-of-way or temporary use permit area is endangering public health or safety or the environment, he may order the immediate suspension of that activity and immediate remedial action.

(b) The authorized officer may order immediate suspension of an activity irrespective of any action that has been or is being taken by another Federal agency or a State agency.

(c) The authorized officer may give an immediate suspension order orally or in writing at the site of the activity to the holder or a contractor or subcontractor of the holder, or to any representative, agent, employee, or contractor of any of them, and the suspended activity shall cease at that time. As soon as practicable, the authorized officer shall confirm the order by a written notice to the holder addressed to the holder or the holder's designated agent.

(d) An order of temporary suspension of activities shall remain effective until the authorized officer issues an order permitting resumption of activities.

(e) Any time after an order of suspension has been issued, the holder may file with the authorized officer a request for permission to resume. The request shall be in writing and shall contain a statement of the facts supporting the request.

(f) The authorized officer may render an order to either grant or deny the request to resume 5 working days of the date the request is filed. If the authorized officer does not render an order on the request within 5 working days, the request shall be considered denied, and the holder shall have the same right to appeal the denial as if an order denying the request had been issued.

§ 2883.6 Suspension and termination of right-of-way grants and temporary use permits.

If the right-of-way grant or temporary use permit provides by its terms that it shall terminate on the occurrence of a fixed or agreed-upon condition or event, the right-of-way grant or temporary use permit shall thereupon automatically terminate by operation of law, unless some other procedure is specified in the right-of-way grant or temporary use permit.

§ 2883.6-1 Suspension and termination of right-of-way grants.

(a) The authorized officer may institute procedures for suspension or termination of a right-of-way grant if it is determined that:

(1) The holder is unwilling, unable or has failed to comply with any term, condition, or stipulation of the right-of-way grant or applicable laws or regulations.

(b) The holder has deliberately failed to use the right-of-way for the purpose for which it was granted or renewed for a continuous 2-year period.

(c) Where the authorized officer determines that a situation under § 2883.6 or § 2883.6-1 of this title exists in connection with a right-of-way grant, he or she shall give written notice to the holder, and refer the matter to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge pursuant to 43 CFR Part 4. The authorized officer shall suspend or terminate the right-of-way grant if the Administrative Law Judge determines that grounds for suspension or termination exists and that such action is justified.

§ 2883.6-2 Suspension and termination of temporary permits.

(a) The authorized officer may institute procedures for suspension or termination of a temporary use permit if it is determined that:

(1) The holder has failed to comply with any term, condition or stipulation of the permit or applicable laws or regulations; or

(2) The holder has deliberately failed to use the temporary use permit area for the purpose for which it was issued or renewed;

(b) Where the authorized officer determines that a situation under § 2883.6 or § 2883.6-2 of this title exists, he or she shall give written notice to the holder. The holder may file a written request for review of the notice to the next higher level of authority. The reviewing official shall, within 10 days of or receipt of such a request, arrange for a review of the activities that prompted the suspension or termination notice. The reviewing official shall, within a reasonable time, affirm, modify or cancel the notice and shall provide the holder with a written determination.

(c) A holder may appeal a decision issued under paragraph (b) of this section pursuant to 43 CFR Part 4.

§ 2883.7 Change in Federal jurisdiction or disposal of lands.

(a) Where a right-of-way administered under these regulations traverses Federal lands that are transferred from one Federal Agency to another, the transfer shall not operate to terminate or modify the right-of-way or the right-of-way grant, unless otherwise provided by law. The Secretary shall continue to administer the right-of-way and the right-of-way grant, including renewals thereof, and collection of rentals and other payments, unless the transfer instrument provides otherwise. Temporary use permits shall likewise continue under the Secretary's administration, except where otherwise provided by law or by the instrument of transfer.

(b) Where a right-of-way administered under these regulations traverses Federal lands that are transferred out of Federal ownership, the transfer shall not operate to terminate or modify the right-of-way grant and temporary use permit(s) unless otherwise provided by law. The new owner of the lands shall take title thereto subject to the right-of-way grant and temporary use permit(s). Unless otherwise provided by law or by the instrument of transfer, the Secretary shall continue to administer the right-of-way and the right-of-way grant and temporary use permit(s) including renewals thereof and collection of rentals and other payments. Temporary use permits are not renewable after such a transfer.

§ 2883.8 Restoration of Federal lands.

(a) Upon termination of a right-of-way grant or temporary use permit and in the absence of any agreement to the contrary, if all moneys due the Federal Government thereunder have been paid, the holder of the right-of-way grant or temporary use permit may be required to remove the improvements from the right-of-way or temporary use permit area. The holder shall be allowed 6 months or such additional time as may be granted in which to remove from the right-of-way or temporary use permit area all property or improvements of any kind placed thereon; but if not removed within the time allowed, all such property and improvements may be removed and disposed of by sale or otherwise by the authorized officer at the holder's sole expense. The holder of the right-of-way grant or temporary use permit shall be liable for all costs incurred by the United States to dismantle and/or remove the property and improvements from Federal lands and to restore the Federal lands to a condition acceptable to the authorized officer.

(b) Upon termination of a right-of-way grant or temporary use permit by expiration or by cancellation, the holder shall restore the Federal lands to a condition satisfactory to the authorized officer. The bond or other security shall not be released by the authorized officer until he determines that there has been satisfactory compliance with this obligation.

Subpart 2884—Appeals

§ 2884.1 Appeals procedure.

(a) All appeals under this part from any final decision of the authorized officer shall be taken in accordance with Part 4 of 43 CFR to the Office of the Secretary, Board of Land Appeals.

(b) All actions taken under this part shall remain effective pending any appeal taken unless the Secretary rules otherwise, and the provisions of 43 CFR 4.21(a) shall not apply to such appeals.

Subparts 2885–2886—[Reserved]

Subpart 2887—Over Lands Subject to Mineral Lease

§ 2887.0-3 Authority.

Section 29 of the Act of February 25, 1920, as amended (30 U.S.C. 186), provides in part that any permit, lease, occupation or use permitted under that act shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights-of-way, including easements in tunnels upon, through or in the lands leased, occupied or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes. Application for such easements or rights-of-way shall be filed in accordance with applicable laws and regulations.

Group 2900—Use; Leases and Permits

PART 2910—LEASES

Subpart 2911—Airport

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CROSS REFERENCE: 43 CFR Part 9.

Subpart 2911—Airport

SOURCE: 35 FR 9663, June 13, 1970, unless otherwise noted.

§ 2911.0-3 Authority.

The Act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 211-214), as amended by the act of August 16, 1941 (55 Stat. 621), authorizes the Secretary of the Interior in his discretion and under such regulations as he may prescribe, to lease for use as a public airport, any contiguous, unreserved and unappropriated public lands, not to exceed 2,560 acres in area. It also authorizes him to grant permission for the establishment of beacon lights and other air navigation facilities, except terminal airports, upon unreserved and unappropriated public lands and to withdraw such lands for such purposes.

§ 2911.0-8 Lands which may be leased.

Any contiguous unreserved and unappropriated public lands, surveyed or unsurveyed, not exceeding 2,560 acres in area, may be leased under the provisions of the Act of May 24, 1928.

§ 2911.1 Nature of interest and terms.

§ 2911.1-1 Prior valid rights.

All leases will be subject to valid existing rights initiated prior to the date the application for lease is filed.

§ 2911.1-2 Terms and conditions.

(a) *Report by lessee.* The lessee shall, within 6 months from the date of the lease, equip the airport as required by the Administrator, Federal Aviation Administration, and file a report thereof in the land office.

(b) *Inspection by Federal Aviation Agency; report.* At any time during the term of the lease the Administrator, Federal Aviation Administration, may have an inspection made of the airport, and if it does not comply with the ratings set by the Federal Aviation Administration that fact, with a statement as to wherein it fails, will be referred to the Bureau of Land Management for appropriate action.

(c) *Cancellation of lease.* The authorized officer may, in his discretion, cancel a lease issued under the act of May 24, 1928, for any of the following reasons: If the lessee fails to use the leased premises or any part thereof, or uses it or any part thereof for a purpose foreign to the proper use, or shall fail to pay the annual rental or any part thereof, or shall fail to maintain the premises according to the ratings set by the Federal Aviation Administration, or shall fail to comply with the regulations in this part or the terms of the lease.

(d) *Period of lease; renewal.* Leases under the act of May 24, 1928, shall be for a period not to exceed 20 years and may be renewed for like period.

(e) *Annual rental.* Every lessee under the Act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 211-214), as amended August 16, 1941 (55 Stat. 621), shall pay to the lessor an annual rental of not less than $10 for an area not exceeding 640 acres, and not less than $5 for each additional 640 acres or fraction thereof. The rental terms of each lease shall be subject to reconsideration and revision at 3-year intervals. The lessee shall be required to submit a report to the Bureau of Land Management, showing the facts as to the gross receipts within 90 days after each anniversary date of the lease. In the event the average annual gross receipts reported during any such interval from operations on the leased land, from all sources, exceed $5,000, the rentals for the succeeding interval or intervals may be increased to such reasonable amount as may be fixed by the authorized officer, but not exceeding 1 percent of such average. Due consideration will be given in fixing the rentals to all pertinent facts and circumstances, including other holdings of the lessee, if any, in connection with which the receipts are obtained. The first annual rental payment shall be made when the application is filed in the proper office. All subsequent payments shall be paid in advance on or before the anniversary date of the lease.

(f) *Use of airport by Government departments and agencies; control for military purposes.* The lessee shall agree that all departments and agencies of the United States operating aircraft shall have free and unrestricted use of the airport and with the approval of the Bureau of Land Management, any departments or agencies shall have the right to erect and install therein such structures and improvements as are deemed advisable. Whenever the President may deem it necessary for military purposes, the Secretary of the Army may assume full control of the airports.

(g) *Regulations governing use of the airport.* The lessee will submit to the Administrator, Federal Aviation Administration for his approval, regulations to govern the use of the airport.

§ 2911.1-3 Beacon lights.

Government department and agencies operating aircraft may be granted permission to establish beacon lights and other navigation facilities except terminal airports, on tracts of unreserved and unappropriated public lands of the United States of appropriate size, on application therefor, under the rules and regulations prescribed in § 2911.1-2. However, no rental will be charged. Lands for beacon lights and other navigation facilities may be withdrawn in accordance with the provisions of Group 2300 and Subpart 2317 of this chapter.

§ 2911.2 Procedures.

§ 2911.2-1 Applications.

(a) Applications under the Act may be made by: Any citizen of the United States; any group or association of citizens of the United States; any corporation, organized under the laws of the United States or of any State, authorized to conduct business in the State in which the land involved is located, any State or any political subdivision or instrumentality thereof, including counties and municipalities.

(b) No specific form of application is required.

(c) Each application must clearly describe the land applied for, must be signed by the applicant or by a duly authorized agent or officer.

(d) Each application must be accompanied by a non-refundable service fee of $10. However, no service fee will be required from a State of political subdivision or instrumentality thereof.

§ 2911.2-2 Report by Administrator, Federal Aviation Administration; execution of lease.

Upon receipt of the application one copy will be referred to the Administrator, Federal Aviation Administration, for consideration as to what fuel facilities, lights, and other furnishings are necessary to meet the rating set by that department. After the Administrator, Federal Aviation Administration, has reported, a lease on a form approved by the Director will be prepared and sent to the applicant for execution.

§ 2911.2-3 Segregation of lands.

The filing in the proper office of an application for a lease of lands under the Act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 211), as amended, shall segregate the lands described in the application from all appropriation.

(R.S. 2478, sec. 1, 45 Stat. 728, as amended; 43 U.S.C. 1201, 49 U.S.C. 211)

Subpart 2912—Recreation and Public Purposes Act

AUTHORITY: Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.).

SOURCE: 44 FR 43473, July 25, 1979, unless otherwise noted.

§ 2912.0-7 Cross reference.

The general requirements and procedures under the Recreation and Public Purposes Act are contained in Part 2740 of this title.

§ 2912.1 Nature of interest.

§ 2912.1-1 Terms and conditions of lease.

(a) The term of leases under the Recreation and Public Purposes Act, hereafter referred to as "the Act," shall be fixed by the authorized officer but shall not exceed 20 years for nonprofit associations and nonprofit corporations, and 25 years for Federal, State, and local governmental entities. A lease may contain, at the discretion of the authorized officer, a provision giving the lessee the privilege of renewing the lease for a like period.

(b) Leases shall be issued on a form approved by the Director, Bureau of Land Management and shall contain terms and conditions required by law, and public policy, and which the authorized officer considers necessary for the proper development of the land, for the protection of Federal property, and for the protection of the public interest.

(c) Leases shall be terminable by the authorized officer upon failure of the lessee to comply with the terms of the lease, upon a finding, after notice and opportunity for hearing, that all or part of the land is being devoted to a use other than the use authorized by the lease, or upon a finding that the land has not been used by the lessee for the purpose specified in the lease for any consecutive period specified by the authorized officer. The specified period of non-use or unauthorized use shall not be less than 2 years nor more than 5 years.

(d) Reasonable annual rentals shall be established by the Secretary of the Interior and shall be payable in advance. Upon notification of the amount of the yearly rental, a lease applicant shall be required to pay at least the first year's rental before the lease shall be issued. Upon the voluntary relinquishment of a lease before the expiration of its term, any rental paid for the unexpired portion of the term shall be returned to the lessee upon a proper application for repayment to the extent that the amount paid covers a full lease year or years of the remainder of the term of the original lease. Leases for recreational or historic-monument purposes to a State, county or other State or Federal instrumentality or political subdivision shall be issued without monetary consideration.

(e) Leases are not transferable except with the consent of the authorized officer. Transferees shall have all the qualifications of applicants under the Act and shall be subject to all the terms and conditions of the regulations in this part.

(f) A lessee shall not be permitted to cut timber from the leased lands without prior permission from the authorized officer.

(g) All leases shall reserve to the United States all minerals together with the right to mine and remove the same under applicable laws and regulations to be established by the Secretary of the Interior.

§ 2912.2 Renewal of leases.

A lessee with a privilege of renewal must notify the authorized officer at least 180 days before the end of the lease period that it will exercise the privilege.

§ 2912.3 Substitution of a new lease.

A lessee may apply for a new lease at any time. Applications for new leases shall be accompanied by consent of the lessee to cancellation of the existing lease upon the issuance of the new lease and by three copies of a statement showing (a) the need for a new lease and (b) any changes in the use or management of the lands or the terms and conditions of the lease which the applicant desires.

§ 2912.4 Leases for solid waste disposal sites.

§ 2912.4-1 Requirement.

Compliance with *Guidelines for the Thermal Processing of Solid Wastes* (40 CFR Part 240). *Guidelines for the Land Disposal of Solid Waste* (40 CFR Part 241), and *Regulations for the Acceptance of Certain Pesticides and Recommended Procedures for the Disposal and Storage of Pesticides and Pesticide Containers* (40 CFR Part 165), and any other regulations or guidelines promulgated pursuant to the Resource Conservation and Recovery Act of 1976 (43 U.S.C. Chapter 82) is required under leases issued for purposes involving disposal of solid waste.

§ 2912.4-2 Procedures.

(a) All new leases shall contain stipulations requiring compliance with the above-referenced regulations and guidelines. Leases and respective plans of development and management already in existence without such specific stipulations shall be amended to require compliance with the above guidelines be lessees. In all cases, the lease must stipulate that failure to comply with the regulations and guidelines shall constitute sufficient grounds for cancellation of the lease.

(b) Lease applications shall include in the plan of development and management detailed description of the methods and procedures that will be employed to achieve compliance with the above regulations and guidelines. The regulations and guidelines delineate minimum standards of performance that must be followed. The recommended methods and procedures in the guidelines are means whereby the requirements may be met. Alternate methods and procedures may be used in meeting the requirements when approved by the authorized officer.

Subpart 2913—Small Tract Act

SOURCE: 35 FR 9665, June 13, 1970, unless otherwise noted.

§ 2913.0-7 Cross reference.

The general requirements of law, regulations and procedures under the Small Tract Act are contained in Part 2730 of this chapter.

§ 2913.1 Terms and conditions of lease.

(a) The term of lease will be specified in the classification order and will not exceed three years for lands classified for lease and sale and will not exceed twenty years for lands classified for lease only.

(b) The amount of rental will be specified in the appropriate order. The rental for community sites will take into consideration the purpose for which the land will be used. Rental for other types of sites will equal the fair market rental of the lands, provided, however, the minimum rental will be $100 per year for business sites and $25 per year for other sites.

(c) Leases issued for periods in excess of five years will provide for the construction of improvements, satisfactory for the purpose for which the lease issued, during the first five years of the lease period. Failure to comply with this requirement will result in cancellation of the lease except where the lessee can demonstrate that such failure was due to unavoidable and unforeseen circumstances.

(d) Provisions relating to the improvement and occupancy of leased tracts are contained in the application form. Special provisions implementing the general provisions or the form may be indicated in the order of classification.

(e) A lessee will not be permitted to cut timber from the leased lands without first obtaining permission from the appropriate office mentioned in § 2731.3-1.

§ 2913.2 Assignment; subleasing.

(a) No assignment of a lease will be recognized unless and until approved by the Bureau of Land Management. Approval of assignments will be discretionary but in no case will an assignment be approved until suitable improvements are constructed on the land, except where the lessee can demonstrate that his failure to construct such improvements was caused by unforeseen and unavoidable circumstances.

(b) Proposed assignments of leases must be submitted within 90 days from the date of execution in duplicate on a form approved by the Director to the appropriate office mentioned in § 1821.2 and must be accompanied by the filing fee as required in § 2731.4.

(c) Subleasing of a tract, in whole or in part, will not be approved.

§ 2913.3 With option to purchase; sale; patent.

(a) Leases for lands classified for lease and sale will contain an option to purchase clause. The option to purchase clause will afford the lessee or his duly approved successor in interest an opportunity to purchase the tract at any time within the term of the lease, provided the improvements required by the lease have been made and all other terms and conditions of the lease complied with. The net purchase price of the land will be the appraised fair market value of the unimproved land as of the date of the lease minus an amount equal to the advance rental for each full lease year, if any, subsequent to the filing of an allowable application to purchase.

(b) An application to purchase must be filed with the office mentioned in § 1821.2 on a form approved by the Director in duplicate, together with (1) a statement as to the cost, type and character of the improvements constructed on the land, (2) one or more photographs showing clearly such improvements, and (3) the filing fee as required in § 2731.4.

(c) If a sale is authorized, the applicant will be allowed 60 days from service of notice thereof to pay the net purchase price.

§ 2913.4 Renewal.

(a) An application for renewal of a lease must be filed on a form approved by the Director in duplicate with the office mentioned in § 2731.3-1(a) prior to the expiration of the lease. A renewal in the form of a new lease will be granted only if it is determined that a new lease should issue and that the requirements of paragraph (b) or (c) of this section have been met. The term of the lease and any special conditions will be established by the officer who signs it. The application must be accompanied by a filing fee in compliance with § 2731.4.

(b) Where the land has been classified for lease only, renewals will be approved only if the lessee has constructed satisfactory improvements on the tract appropriate to the type of use for which the lease originally issued, such as a substantial and presentable dwelling suitable for year-round or seasonal use where the land was classified for residence purposes.

(c) Where the land has been classified for lease and sale, renewals will be approved only upon a satisfactory showing that the lessee's failure to meet the requirements for sale of the tract is justified under the circumstances and that nonrenewal of the lease would work an extreme hardship on the lessee.

§ 2913.5 Termination or cancellation; removal of improvements.

(a) The lessee may terminate the lease, if he is not in default thereunder, by filing a notice of relinquishment of the lease in the proper land office. Any lease may be canceled where the lessee has failed to comply with any of the terms, covenants, and stipulations of the lease, or to abide by any of the regulations in this part, and such default has continued for 30 days after written notice thereof.

(b) No refund will be made of rental for the unexpired term of a lease relinquished by the lessee or canceled for cause.

(c) Upon the termination, cancellation, or expiration of a lease, the lessee will have a period of 90 days within which to remove his improvements from the land or to make other disposition thereof. If the improvements are disposed of to a person other than a subsequent lessee they must be removed from the land within the 90-day period, otherwise the improvements will become the property of the United States.

Subpart 2914—Mining Claim Occupancy Act

NOTE: Act expired but regulations retained for adjudication of pending applications.

§ 2914.0-3 Authority.

The Act of October 23, 1962, as amended (76 Stat. 1127; 30 U.S.C. 701-709) provides that any conveyance of less than a fee made under the Act shall include provision for removal from the tract of any improvements or other property of the applicant at the close of the period for which the conveyance is made, or if it be an interest terminating on the death of the applicant, within one year thereafter.

[35 FR 9665, June 13, 1970]

§ 2914.0-7 Cross reference.

The general requirements of law, regulation and procedure under the Mining Claim Occupancy Act are contained in Part 2550 of this chapter.

[35 FR 9665, June 13, 1970]

Subpart 2916—Alaska Fur Farm

SOURCE: 35 FR 9665, June 13, 1970, unless otherwise noted.

§ 2916.0-3 Authority.

The Act of July 3, 1926 (44 Stat. 821, 48 U.S.C. secs. 360, 361), authorizes the Secretary of the Interior to lease public lands on the mainland of or islands in Alaska, with the exception of the Pribilof Islands, for fur farming, for periods not exceeding ten years.

§ 2916.0-6 Policy.

(a) The authority to lease the public lands in Alaska for fur-farming purposes was granted in order to promote the development of the production of furs in Alaska.

(b) No lease for the purpose of raising beavers will be granted on any area already occupied by a beaver colony nor will any such lease be granted on streams or lakes where the activities of beavers may interfere with the run or spawning of salmon.

(c) In order to offer more people an opportunity to lease lands, and to avoid tying up large areas of land unnecessarily, fur-farming leases on public lands will not be granted for areas greater than are justified by the needs and experience of the applicant.

§ 2916.0-8 Area subject to lease.

(a) *Acreage limitation and exceptions.* (1) On the mainland such leases may be for an area not exceeding 640 acres. A lease may cover an entire island, provided the area thereof does not exceed 30 square miles, and provided the need for such entire island is clearly established. Islands so close together that animals can cross from one to the other and whose combined area does not exceed 30 square miles, will be treated as one island. Islands having an area of more than 30 square miles will be treated as mainland.

(2) Where a lease is granted for an area in excess of 640 acres on an island, the manager may, after notice to the lessee, reduce the area to an amount not less than 640 acres, if he determines that the lessee cannot reasonably use all of the area for which the lease was granted.

(b) *Lands subject to lease.* (1) Vacant, unreserved, and unappropriated public lands are subject to lease.

(2) Except for lands under the jurisdiction of the Fish and Wildlife Service and the National Park Service, public lands withdrawn or reserved for any purpose are subject to lease, if the department or agency having jurisdiction thereof consents to the issuance of the lease.

§ 2916.1 Terms and conditions.

§ 2916.1-1 Commencement of operations; stocking lands.

The lessee shall, within one year from the date of issuance of the lease, commence operations by taking possession of the leased area, and by placing thereon within that period such improvements as may be needed for such operations and as will show good faith, and shall thereafter develop the fur-farming enterprise on the leased area with reasonable diligence. The lessee shall stock the leased area with the minimum of fur-bearing animals required by the lease within the periods specified in the lease.

§ 2916.1-2 Rights reserved; protection of improvements and roads.

Nothing in this part or any lease issued under this part shall interfere with or prevent:

(a) The prospecting, locating, development, entering, leasing, or patenting of mineral resources in the leased area under laws applicable thereto.

(b) The use and disposal of timber or other resources on or in the leased area under applicable laws.

(c) The use and occupation of parts of leased areas for the taking, preparing, manufacturing, or storing of fish or fish products, or the utilization of the lands for purposes of trade or business, to the extent and in the manner provided by law, and as authorized by the State Director.

(d) The acquisition or granting of rights-of-way or easements under applicable laws and regulations.

(e) Hunting and fishing under applicable Federal and State hunting and fishing laws and regulations, but the authorized officer may prohibit or restrict, or he may authorize the lessee to prohibit or restrict hunting or fishing on such parts of the leased area and for such periods as he may determine to be necessary in order to prevent any substantial interference with the purposes for which the lease is issued.

§ 2916.2 Procedures.

§ 2916.2-1 Applications.

(a) *Qualifications of applicants.* Any person who is a citizen of the United States, or any group or association composed of such persons, or any corporation organized under the laws of the United States, or of any State thereof, authorized to conduct business in Alaska may file an application.

(b) *Contents of application.* An application for lease should be filed in duplicate in the proper office. No specific form of application is required, but the application should contain or be accompanied by the following:

(1) Applicant's full name, post office address, the general nature of his present business, and the principal place of business.

(2) (i) A statement of the age and of the citizenship status, whether native-born or naturalized, of the applicant, if an individual, or of each partner or member of a partnership or association. A copartnership or an association applicant shall file a copy of whatever written articles of association its members have executed.

(ii) A corporation shall file a certified copy of its articles of incorporation, evidence that it is authorized to transact business in Alaska, and a copy of the corporate minutes or resolutions authorizing the filing of the application and the execution of the lease.

(3) Description of the land for which the lease is desired, by legal subdivision, section, township, and range, if surveyed, and by metes and bounds, with the approximate area, if unsurveyed. The metes and bounds description should be connected by course and distance with some corner of the public-land surveys, if practicable, or with reference to rivers, creeks, mountains, towns, islands, or other prominent topographical points or natural objects or monuments.

(4) A statement as to the applicant's experience in and knowledge of fur farming.

(5) A statement as to the kind of fur-bearing animals to be raised, and, if foxes, the color type; the number of fur-bearing animals the applicant proposes to have on the leased land within one year from the date of the lease, and whether it is proposed to purchase or trap the stock; and that before commencing operations of any lease which may be issued, the applicant will procure from the appropriate State game agency whatever licenses are required under Alaska law.

(6) A detailed statement of the reasons for the need for any area in excess of 640 acres but not exceeding 30 square miles, when the land applied for is comprised of an island, or islands.

(7) A statement of the nature and results of the investigation made by applicant as to whether the land and climate are suited to raising the kind of animals proposed to be stocked.

(8) A statement as to whether the land is occupied, claimed, or used by natives of Alaska or others; and, if so the nature of the use and occupancy and the improvements thereon, if any.

(9) If beavers are to be raised, a statement as to whether a beaver colony exists on the land, and whether salmon streams or lakes are on or adjacent to the land proposed to be leased.

(10) A statement that the applicant is acting solely on his own account and not under any agreement or understanding with another.

(11) The serial numbers of all other applications filed or leases obtained under this act by applicant, or applicant's spouse or business associate, or in which applicant has a direct or indirect interest.

(12) The showing as to hot or medicinal springs required by § 2311.2(a) of this chapter.

(13) All applications must be accompanied by an application service fee of $10 which will not be returnable.

(c) *Form of lease; rental and royalty; report of annual operations.* (1) Leases will be issued on a form approved by the Director.

(2) Prior to the issuance of a lease and annually thereafter, the lessee shall pay an advance rental of $5 per annum if the lease embraces 10 acres or less, a rental of $25 per annum if the leased area is more than 10 acres but not more than 640 acres, and a rental of $50 per annum if the leased area exceeds 640 acres.

(3) Within 60 days after the end of each lease year the lessee shall file with the land office a report on a form approved by the Director, in duplicate, showing his operations under the lease and his gross receipts thereunder from the sale of live animals and pelts for the preceding lease year. The lessee shall pay, at the time of filing the report, a royalty of 1 percent of such gross receipts deducting therefrom the amount of the advance rental payment made for such preceding lease year.

§ 2916.2-2 Assignments and subleases.

A proposed assignment on a lease, in whole or in part, or a sublease, must be filed in duplicate with the proper office within 90 days from the date of its execution; must contain all of the terms and conditions agreed upon by the parties thereto; and must be supported by a statement that the assignee or sublessee agrees to be bound by the provisions of the lease. The assignee or sublessee must submit with the assignment or sublease the information or statements required by § 2916.2-1(b) (1), (2), (4), (5), (10), and (11). No assignment or sublease will be recognized unless and until approved by the authorizing officer.

(Sec. 2, 44 Stat. 822; 48 U.S.C. 361)

§ 2916.2-3 Renewal of leases.

Upon an application filed in the proper office within 90 days preceding the expiration date of the lease, if it is determined that a renewal lease should be granted, the lessee will be offered such lease by the authorized officer, upon such terms and conditions and for such duration as may be fixed, not exceeding 10 years. The filing of an application for renewal does not confer on the lessee any preference right to a renewal. The timely filing of an application will, however authorize the exclusive fur-farming use of the lands by the lessee in accordance with the terms of the prior lease pending final action on the renewal application.

§ 2916.2-4 Termination of lease: cancellation.

(a) *Action by authorized officer.* (1) The authorized officer may terminate a lease at the request of the lessee if the lessee shall make satisfactory showing that such termination will not adversely affect the public interest and that he has paid all charges due the Government thereunder.

(2) A lease may be canceled if the lessee shall fail to comply with any of the provisions of this part or of the lease, or shall devote the lease area primarily to any purpose other than the rearing of fur-bearing animals as authorized. No lease will be canceled until the lessee has been formally notified of such default and such default shall continue for 60 days after service of such notice.

(b) *Removal of improvements and personal property.* (1) Improvements or personal property may not be removed from the lands, except fur-bearing animals disposed of in the regular course of business, unless all moneys due the United States under the lease have been paid. The lessee shall be allowed 90 days from the date of expiration or termination of the lease within which to remove his personal property and such improvements as are not disposed of in the manner set forth in paragraph (b)(2) of this section, which he has a right to remove; if not removed or otherwise disposed of within the said period, such improvements or personal property shall become the property of the United States.

(2) Upon the expiration of the lease or the earlier termination thereof, the authorizing officer may, in his discretion and upon a written petition filed by the lessee within 30 days from the date of such expiration or termination, require the subsequent lease applicant, prior to the execution of a new lease, to agree to compensate the lessee for any improvements of a permanent nature that he may have placed upon the leased area for fur-farming purposes during the period of the lease. If the interested parties are unable to reach an agreement as to the amount of compensation, the amount shall be fixed by the authorizing officer. All such agreements to be effective, must be approved by the authorizing officer. The failure of the subsequent lessee to pay the former lessee in accordance with such agreement will be just cause for cancellation of the lease.

Part 2920—LEASES, PERMITS AND EASEMENTS

Subpart 2920—Leases, Permits and Easements—General Provisions

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AUTHORITY: Sec. 302, Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732).

SOURCE: 46 FR 5777, Jan. 19, 1981, unless otherwise noted.

Subpart 2920—Leases, Permits and Easements—General Provisions

§ 2920.0-1 Purpose.

The purpose of the regulatons in this part is to establish procedures for the orderly and timely processing of proposals for non-Federal use of the public lands. The procedural and informational requirements set by these regulations vary in relation to the nature of the anticipated use.

§ 2920.0-3 Authority.

Sections 302 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1740), authorize the Secretary of the Interior to issue regulations providing for the use, occupancy and development of the public lands through leases, permits and easements.

§ 2920.0-5 Definitions.

As used in this part, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part.

(b) "Easement" means an authorization for a non-possessory, non-exclusive interest in lands which specifies the rights of the holder and the obligation of the Bureau of Land Management to use and manage the lands in a manner consistent with the terms of the easement.

(c) "Lease" means an authorization to possess and use public lands for a fixed period of time.

(d) "Permit" means a short-term revocable authorization to use public lands for specified purposes.

(e) "Land use proposal" means an informal statement, in writing, from any person to the authorized officer requesting consideration of a specified use of the public lands.

(f) "Land use plan" means resource management plans or management framework plans prepared by the Bureau of Land Management pursuant to its land use planning system.

(g) "Public lands" means lands or interests in lands administered by the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts and Eskimos.

(h) "Person" means any person or entity legally capable of conveying and holding lands or interests therein, under the laws of the State within which the lands or interests therein are located, who is a citizen of the United States, or in the case of a corporation, is subject to the laws of any State or of the United States.

(i) "Proponent" means any person who submits a land use proposal, either on his/her own initiative or in response to a notice for submission of such proposals.

(j) "Applicant" means any person who submits an application for a land use authorization under this part.

(k) "Casual use" means any short term non-commercial activity which does not cause appreciable damage or disturbance to the public lands, their resources or improvements, and which is not prohibited by closure of the lands to such activities.

(l) "Land use authorization" means any authorization to use the public lands issued under this part.

§ 2920.0-6 Policy.

(a) Land use authorizations shall be issued only at fair market value and only for those uses that conform with Bureau of Land Management plans, policy, objectives and resource management programs. Conformance with land use authorizations will be determined through the planning process and procedures provided in Part 1600 of this title.

(b) In determining the informational and procedural requirements, the authorized officer will consider the duration of the anticipated use, its impact on the public lands and resources and the investment required by the anticipated use.

§ 2920.1 Uses authorized.

Uses not specifically authorized under other laws or regulations and not specifically forbidden by law may be authorized; under this part. Uses which may be authorized include residential, agricultural, industrial and commercial uses, and uses which cannot be authorized under title V of the Federal Land Policy and Management Act or section 28 of the Mineral Leasing Act. Land use authorizations shall be granted under the following categories:

(a) Leases shall be used to authorize uses of public lands involving substantial construction, development or land improvement and the investment of large amounts of capital which are to be amortized over time. A lease conveys a possessory interest and is revocable only in accordance with its terms and the provisions of § 2920.9-3 of this title. Leases shall be issued for a term, determined by the authorized officer, that is consistent with the time required to amortize the capital investment.

(b) Permits shall be used to authorize uses of public lands for not to exceed 3 years that involve either little or no land improvement, construction or investment, or investment which can be amortized within the term of the permit. A permit conveys no possessory interest. It is renewable at the discretion of the authorized officer and may be revoked in accordance with its terms and the provisions of § 2920.9-3 of this title. Permits shall be issued on a form approved by the Director, Bureau of Land Management that has been filed by the applicant with the appropriate Bureau of Land Management office.

(c) Easements may be used to assure that uses of public lands are compatible with non-Federal uses occurring on adjacent or nearby land. The term of the easement shall be determined by the authorized officer. An easement granted under this part may only be for purposes not authorized under title V of the Federal Land Policy and Management Act or section 28 of the Mineral Leasing Act.

(d) No land use authorization is required under the regulations of this part for casual use of the public lands.

§ 2920.2 Procedures for public initiated land use proposals.

§ 2920.2-1 Discussion of proposals.

(a) *Suggestions by land use proponent.* Any person who seeks to use public lands may contact the Bureau of Land Management office having jurisdiction over the public lands in question and discuss the land use proposal. This contact should be made as early as possible so that administrative requirements and potential conflicts with other land uses can be identified.

(b) *Response by the authorized officer.* The authorized officer will discuss with the land use proponent whether the requested land use, suitability or non-suitability of the requested land use based on a preliminary examination of existing land use plans, where available, is or is not in conformance with Bureau of Land Management policies and programs for the lands, local zoning ordinances and any other pertinent information. The authorized officer will discuss administrative requirements for the type of land use authorization which may be granted (lease, permit or easement), including, but not limited to: additional information which may be required; qualifications; cost reimbursement requirements; associated clearances, other permits or licenses which may be required; environmental and management considerations; and special requirements such as competitive bidding and identification of on-the-ground investigations which may be required in order to issue a land use authorization.

§ 2920.2-2 Minimum impact permits.

The authorized officer may, without publication of a notice of realty action, issue a permit for a land use authorization upon a determination that the proposed use is in conformance with Bureau of Land Management plans, policies and programs, local zoning ordinances and any other requirements and will not cause appreciable damage or disturbance to the public lands, their resources or improvements.

§ 2920.2-3 Other land use proposals.

(a) A proposal for a land use authorization, including permits not covered by § 2920.2-2 of this title, shall be submitted in writing to the Bureau of Land Management office having jurisdiction over the public lands covered by the proposal.

(b) The submission of a proposal gives no right to use the public lands.

§ 2920.2-4 Proposal content.

(a) Proposals for a land use authorization shall include a description of the proposed land use in sufficient detail to enable the authorized officer to evaluate the feasibility of the proposed land use, the impacts if any, on the environment, the public or other benefits from the proposed land use, the approximate cost of the proposal, any threat to the public health and safety posed by the proposal and whether the proposal is, in the proponent's opinion, in conformance with Bureau of Land Management plans, programs and policies for the public lands covered by the proposal. The description shall include, but not be limited to:

(1) Details of the proposed uses and activities;

(2) A description of all facilities for which authorization is sought, access needs and special types of easements that may be needed;

(3) A map of sufficient scale to allow all of the required information to be legible and a legal description of primary and alternative project locations; and

(4) A schedule for construction of any facilities.

(b) The proposal shall include the name, legal mailing address and telephone number of the land use proponent.

§ 2920.2-5 Proposal review.

(a) A land use proposal shall, upon submission, be reviewed to determine if the public lands covered by the proposal are appropriate for the proposed land use and if the proposal is otherwise legal.

(b) If the proposal is found to be appropriate for further consideration, the authorized officer shall examine the proposal and make one of the following determinations:

(1) The proposed land use is in conformance with the appropriate land use plan and can be approved;

(2) The proposed land use has not been addressed in an existing land use plan and shall be addressed in accordance with the procedure in Part 1600 of this title;

(3) The proposed land use is in an area not covered in an existing land use plan and shall be processed in accordance with the procedure in § 1601.8 of this title; or

(4) The proposed land use is not in conformance with the approved land use plan. This determination may be appealed under 43 CFR 4.400 for review of the question of conformance with the land use plan.

(c)(1) If a proposed land use does not meet the requirements of this subpart or is found not to be in conformance with the land use plan, the authorized officer shall so advise the proponent and shall provide a written explanation of the reasons the proposed use does not meet the requirements of this subpart and/or is not in conformance with an existing land use plan.

(2) Where a proposed land use is determined not to be in conformance with an approved land use plan, with the land use plan, the authorized officer may consider the proposal for land use as an application to amend or revise the existing land use plan under Part 1600 of this title.

§ 2920.3 Bureau of Land Management initiated land use proposals.

Where, as a result of the land use planning process, the desirability of allowing use of the public lands or providing increased service to the public from such use of the public lands is demonstrated, the authorized officer may identify a use for the public land and notify the public that proposals for utilizing the land through a lease, permit or easement will be considered.

§ 2920.4 Notice of realty action.

(a) A notice of realty action indicating the availability of public lands for non-Federal uses through lease, permit or easement shall be issued, published and sent to parties of interest by the authorized officer, including, but not limited to, adjoining land owners and current or past land users, when a determination has been made that such public lands are available for a particular use either through the submission of a public initiated proposal or through the land use planning process.

(b) The notice shall include the use proposed for the public lands and shall notify the public that applications for a lease, permit or easement shall be considered. The notice shall specify the form of negotiation, whether by competitive or non-competitive bidding, under which the land use authorization shall be issued. A notice of realty action is not a specific action implementing a resource management plan or amendment.

(c) The notice of realty action shall be published once in the FEDERAL REGISTER and once a week for 3 weeks thereafter in a newspaper of general circulation in the vicinity of the public lands included in the land use proposal.

(d) An application submitted before a notice of realty action is published shall not be processed and shall be returned to the person who submitted it. Return of an application shall not be subject to appeal or protest.

§ 2920.5 Application procedure.

§ 2920.5-1 Filing of applications for land use authorizations.

(a) Only after publication of a notice of realty action shall an application for a land use authorization be filed with the Bureau of Land Management office having jurisdiction over the public lands covered by the application.

(b) The filing of an application gives no right to use the public lands.

§ 2920.5-2 Application content.

(a) Applications for land use authorizations shall include a reference to the notice of realty action under which the application is filed and a description of the proposed land use in sufficient detail to enable the authorized officer to evaluate the feasibility of the proposed land use, the impacts, if any, on the environment, the public or other benefits from the land use, the approximate cost of the proposed land use, any threat to the public health and safety posed by the proposed use and whether the proposed use is, in the opinion of the applicant, in conformance with the Bureau of Land Management plans, programs and policies for the public lands covered by the proposed use. The description shall include, but not be limited to:

(1) Details of the proposed uses and activities;

(2) A description of all facilities for which authorization is sought, access needs and special types of easements that may be needed;

(3) A map of sufficient scale to allow all of the required information to be legible and a legal description of primary and alternative project locations; and

(4) A schedule for construction of any facilities.

(b) Additional information:

(1) After review of the project description, the authorized officer may require the applicant(s) to fund or to perform additional studies or submit additional environmental data, or both, so as to enable the Bureau of Land Management to prepare an environmental analysis in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and comply with the requirements of the National Historic Preservation Act of 1966 (16 U.S.C. 470); The Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.); Executive Order 11593, "Protection and Enhancement of the Cultural Environment" of May 13, 1971 (36 FR 8921); "Procedures for the Protection of Historic and Cultural Properties (36 CFR Part 300); and other laws and regulations as applicable.

(2) An application for the use of public lands may require additional private, State, local or other Federal agency licenses, permits, easements, certificates or other approval documents. The authorized officer may require the applicant to furnish such documents, or proof of application for such documents, as part of the application.

(3) The authorized officer may require evidence that the applicant has, or prior to commencement of construction will have, the technical and financial capability to construct, operate, maintain and terminate the authorized land use.

(c) The application shall include the name and legal mailing address of the applicant.

(d) *Business Associations.* If the applicant is other than an individual, the application shall include the name and address of an agent authorized to receive notice of actions pertaining to the application.

(e) *Federal departments and agencies.* Federal departments and agencies are not qualified to hold land use authorizations under this authority.

(f) If any of the information required in this section has already been submitted as part of a land use proposal submitted under § 2920.2 of this title, the application need only refer to that proposal by filing date, office and case number. The applicant shall certify that there have been no changes in any of the information.

§ 2920.5-3 Application review.

Every application shall be reviewed to determine if it conforms to the notice of realty action. If the application does not meet the requirements of this subpart, the application may be denied, and the applicant shall be so advised in writing, with an explanation.

§ 2920.5-4 Competitive or non-competitive bids.

(a) *Competitive.* Land use authorizations may be offered on a competitive basis if, in the judgment of the authorized officer, a competitive interest exists or if no equities, such as prior use of the lands, warrant non-competitive land use authorization. Land use authorizations shall be awarded on the basis of the public benefit to be provided, the financial and technical capability of the bidder to undertake the project and the bid offered. A bid at less than fair market value shall not be considered. Each bidder shall submit information required by the notice of realty action.

(b) *Non-competitive.* Land use authorizations may be offered on a negotiated, non-competitive basis, when, in the judgement of the authorized officer equities, such as prior use of the lands, exist, no competitive interest exists or where competitive bidding would represent unfair competitive and economic disadvantage to the originator of the unique land use concept. The non-competitive bid shall not be for less than fair market value.

§ 2920.5-5 Application processing.

(a) After review of applications filed, the authorized officer shall select one application for further processing in accordance with the notice of realty action. The authorized officer shall provide public notice of the selection of an applicant and notify the selected applicant, in writing, of the selection. All other applications shall be rejected and returned to the applicants.

(b) The selected land use applicant shall submit any additional information that the authorized officer considers necessary to process the land use authorization.

§ 2920.6 Reimbursement of costs.

(a) When two or more applications are submitted for a land use authorization, each applicant shall be liable for the identifiable costs of processing his (or her) application. Where the costs of processing two or more applications cannot be readily identified with particular applications, all applicants shall be liable for such costs, to be divided equally among them.

(b) The selected land use applicant shall reimburse the United States for reasonable administrative and other costs incurred by the United States in processing a land use authorization application and in monitoring construction, operation, maintenance and rehabilitation of facilities authorized under this part, including preparation of reports and statements required by the National Environmental Policy Act of 1969 (43 U.S.C. 4321 et seq.). The reimbursement of costs shall be in accordance with the provisions of § 2803.1-1 of this title, except that any permit whose total rental is less than $250 shall be exempt from reimbursement of costs requirements.

(c) The authorized officer may, before beginning any processing of a land use authorization application, require payment, as may be needed, to cover the estimated costs of processing the application. Before granting a land use authorization, the authorized officer shall assess and collect the actual costs of processing after furnishing the applicant with a statement of costs. This payment shall be determined in accordance with the provisions of § 2803 of this title.

(d) A selected applicant who withdraws, in writing, a land use application before a final decision is reached on the authorization is responsible for all costs incurred by the United States in processing the application up to the day that the authorized officer receives notice of the withdrawal and for costs subsequently incurred by the United States in terminating the proposed land use authorization process. Reimbursement of such costs shall be paid within 30 days of receipt of notice from the authorized officer of the amount due.

(e) Advance payments based on a schedule of rates developed by the authorized officer, are required for monitoring of operations and maintenance during the term of the land use authorization, which amount shall be paid simultaneously with the rental payment required by § 2920.8(a) of this title.

(f) The selected applicant shall, before a land use authorization is issued, submit a payment based on a schedule of rates developed by the Director, Bureau of Land Management, for monitoring rehabilitation or restoration of the lands upon expiration of the land use authorization.

(g) If payment, as required by paragraphs (b), (d) and (e) of this section, exceeds actual costs to the United States, refund may be made by the authorized officer from applicable funds under authority of 43 U.S.C. 1734, or the authorized officer may adjust the next billing to reflect the overpayment. Neither an applicant nor a holder of land use authorization shall set off or otherwise deduct any debt due to or any sum claimed to be owed them by the United States without the prior written approval of the authorized officer.

(h) The authorized officer shall, on request, give a selected applicant an estimate, based on the best available cost information, of the costs, which may be incurred by the United States in processing the proposed land use authorization. However, reimbursement shall not be limited to the estimate of the authorized officer if actual costs exceed the projected estimate.

(i) When through partnership, joint venture or other business arrangement, more than one person, partnership, corporation, association or other entity jointly make application for a land use authorization, each such party shall be jointly and severally liable for the costs under this section.

(j) Requests for modification of or addition to the land use authorization or reconstruction or relocation of any authorized facilities shall be treated as a new application for cost recovery purposes and are subject to the cost requirements of this section.

§ 2920.7 Terms and conditions.

(a) In all land use authorizations the United States reserves the right to use the public lands or to authorize the use of the public lands by the general public in any way compatible or consistent with the authorized land use and such reservations shall be included as a part of all land use authorizations. Authorized representatives of the Department of the Interior, other Federal agencies and State and local law enforcement personnel shall at all times have the right to enter the premises on official business. Holders shall not close or otherwise obstruct the use of roads or trails commonly in public use.

(b) Each land use authorization shall contain terms and conditions which shall:

(1) Carry out the purposes of applicable law and regulations issued thereunder;

(2) Minimize damage to scenic, cultural and aesthetic values, fish and wildlife habitat and otherwise protect the environment;

(3) Require compliance with air and water quality standards established pursuant to applicable Federal or State law; and

(4) Require compliance with State standards for public health and safety, environmental protection, siting, construction, operation and maintenance of, or for, such use if those standards are more stringent than applicable Federal standards.

(c) Land use authorizations shall also contain such other terms and conditions as the authorized officer considers necessary to:

(1) Protect Federal property and economic interests;

(2) Manage efficiently the public lands which are subject to the use or adjacent to or occupied by such use;

(3) Protect lives and property;

(4) Protect the interests of individuals living in the general area of the use who rely on the fish, wildlife and other biotic resources of the area for subsistence purposes;

(5) Require the use to be located in an area which shall cause least damage to the environment, taking into consideration feasibility and other relevant factors; and

(6) Otherwise protect the public interest.

(d) A holder shall be required to secure authorization under applicable law to pay in advance the fair market value, as determined by the authorized officer, of any mineral, vegetative materials (including timber) to be cut, removed, used or destroyed on public lands.

(e) A holder shall not use the public lands for any purposes other than those specified in the land use authorization without the approval of the authorized officer.

(f) Liability provisions:

(1) Holders of a land use authorization and all owners of any interest in, and all affiliates or subsidiaries of any holder of a land use authorization issued under these regulations shall pay the United States the full value for all injuries or damage to public lands or other property of the United States caused by the holder or by its employees, agents or servants, or by a contractor, its employees, agents or servants, except holders shall be held to standards of strict liability where the Secretary of the Interior determines that the activities taking place on the area covered by the land use authorization present a foreseeable hazard or risk of danger to public lands or other property of the United States. Strict liability shall not be applied where such damages or injuries result from acts of war or negligence of the United States.

(2) Holders of a land use authorization and all owners of any interest in, and affiliates or subsidiaries of any holder of a land use authorization issued under these regulations shall pay third parties the full value of all injuries or damage to life, person or property caused by the holder, its employees, agents or servants or by a contractor, its employees, agents or servants.

(3) Holders of a land use authorization shall indemnify or hold harmless the United States against any liability for damages to life, person or property arising from the authorized occupancy or use of the public lands under the land use authorization. Where a land use authorization is issued to a State or local government or any agency or instrumentality thereof, which has no legal power to assume such liability with respect to damages caused by it to lands or property, such State or local government or agency in lieu thereof shall be required to repair all damages.

(g) The authorized officer may require a bond or other security satisfactory to him/her to insure the fulfillment of the terms and conditions of the land use authorization.

(h) Any land use authorization existing on the effective date of this regulation is not affected by this regulation and shall continue to be administered under the statutory authority under which it was issued. However, by filing a proposal for amendment or renewal, the holder of a land use authorization shall be considered to have agreed to convert the entire authorization to the current statutory authority and the regulations in effect at the time of approval of the amendment or renewal.

(i) The holder of a land use authorization who has complied with the provisions thereof, shall, upon the filing of a request for renewal, be the preferred user for a new land use authorization provided that the public lands are not needed for another use. Renewal, if granted, shall be subject to new terms and conditions. If so specified in the terms of a permit, the permit may be automatically renewable upon payment of the annual rental unless the authorized officer notifies the permittee within 60 days of the expiration date of the permit that the permit shall not be renewed.

(j) Land use authorizations may be transferred in whole or in part but only under the following conditions:

(1) the transferee shall comply with the provisions of § 2920.2-3 of this title;

(2) the authorized officer may modify the terms and conditions of the land use authorization and the transferee shall agree, in writing, to comply with and be bound by the terms and conditions of the authorization as modified; and

(3) transfers shall not take effect until approved by the authorized officer.

(k) If public lands included in a lease or easement are to be disposed of, the conveyance shall be made subject to the lease or easement. Permits shall be revoked prior to disposal of the public lands.

§ 2920.8 Fees.

(a) *Rental.* (1) Holders of a land use authorization shall pay annually or otherwise as determined by the authorized officer, in advance, a rental as determined by the authorized officer. The rental shall be based either upon the fair market value of the rights authorized in the land use authorization or as determined by competitive bidding. In no case shall the rental be less than fair market value.

(2) Rental fees for leases and easements may be adjusted every 5 years or earlier, as determined by the authorized officer, to reflect current fair market value.

(3) The rental fees required by this section are payable when due, and a late charge of 1 percent per month of the unpaid amount or $15 per month, whichever is greater, shall be assessed if subsequent billings are required. Failure to pay the rental fee in a timely manner is cause for termination of the land use authorization.

(b) *Processing Fee.* Each request for renewal, transfer or assignment of a lease or easement shall be accompanied by a non-refundable processing fee of $25. The authorized officer may waive or reduce this fee for requests for permit renewals which can be processed with a minimal amount of work.

§ 2920.9 Supervision of the land use authorization.

§ 2920.9-1 Construction phase.

(a) Unless otherwise stated in the land use authorization, construction may proceed immediately upon receipt and acceptance of the land use authorization by the selected applicant.

(b) Where an authorization to use public lands provides that no construction shall occur until specific permission to begin construction is granted, no construction shall occur until an appropriate Notice to Proceed has been issued by the authorized officer, following the submission and approval of required plans or documents.

(c) The authorized officer shall inspect and monitor construction as necessary, to assure compliance with approved plans and protection of the resources, the environment and the public health, safety and welfare.

(d) The holder of a land use authorization may be required to designate a field representative who can accept and act on guidance and instructions from the authorized officer.

(e) The holder of a land use authorization may be required to provide proof of construction to the approved plan and required standards. Thereafter, operation of the authorized facilities may begin.

§ 2920.9-2 Operation and maintenance.

The authorized officer shall inspect and monitor the operation and maintenance of the land use authorization area, its facilities and improvements to assure compliance with the plan of management and protection of the resources, the environment and the public health, safety and welfare, and the holder of the land use authorization shall take corrective action as required by the authorized officer.

§ 2920.9-3 Termination and suspension.

(a) Land use authorizations may be terminated under the following circumstances:

(1) If a land use authorization provides by its terms that it shall terminate on the occurrence of a fixed or agreed-upon event, the land use authorization shall thereupon automati-

cally terminate by operation of law upon the occurrence of such event.

(2) Noncompliance with applicable law, regulations or terms and conditions of the land use authorization.

(3) Failure of the holder to use the land use authorization for the purpose for which it was authorized. Failure to construct or nonuse for any continuous 2-year period shall constitute a presumption of abandonment and termination.

(4) Mutual agreement that the land use authorization should be terminated.

(5) Nonpayment of rent for 2 consecutive months, following notice of payment due.

(6) So that the public lands covered by the permit can be disposed of or used for any other purpose.

(b)(1) Upon determination that there is noncompliance with the terms and conditions of a land use authorization which adversely affects the public health, safety or welfare or the environment, the authorized officer shall issue an immediate temporary suspension.

(2) The authorized officer may give an immediate temporary susension order orally or in writing at the site of the activity to the holder or a contractor or subcontractor of the holder, or to any representative, agent, employee or contractor of any of them, and the suspended activity shall cease at that time. As soon as practicable, the authorized officer shall confirm the order by a written notice to the holder addressed to the holder or the holder's designated agent. The authorized officer may also take such action considered necessary to require correction of such defects prior to an administrative proceeding.

(3) The authorized officer may order immediate temporary suspension of an activity regardless of any action that has been or is being taken by another Federal agency or a State agency.

(4) An order of temporary suspension of activities shall remain effective until the authorized officer issues an order permitting resumption of activities.

(5) Any time after an order of suspension has been issued, the holder may file with the authorized officer a request for permission to resume. The request shall be in writing and shall contain a statement of the facts supporting the request.

(6) The authorized officer may render an order to either grant or deny the request to resume within 5 working days of the date the request is filed. If the authorized officer does not render an order on the request within 5 working days, the request shall be considered denied, the holder shall have the same right to appeal the denial as if an order denying the request had been issued.

(c) Process for termination or suspension other than temporary immediate suspension.

(1) Prior to commencing any proceeding to suspend or terminate a land use authorization, the authorized officer shall give written notice to the holder of the legal grounds for such action and shall give the holder a reasonable time to correct any noncompliance.

(2) After due notice of termination or suspension to the holder of a land use authorization, if noncompliance still exists after a reasonable time, the authorized officer shall give written notice to the holder and refer the matter to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge pursuant to 43 CFR 4.420-4.439. The authorized officer shall suspend or revoke the land use authorization if the Administrative Law Judge determines that grounds for suspension or revocation exists and that such action is justified.

(3) The authorized officer shall terminate a suspension order when the authorized officer determines that the violation causing such suspension has been rectified.

(d) Upon termination, revocation or cancellation of a land use authorization, the holder shall remove all structures and improvements except those owned by the United States within 60 days of the notice of termination, revocation or cancellation and shall restore the site to its pre-use condition, unless otherwise agreed upon in writing or in the land use authorization. If the holder fails to remove all such structures or improvements within a reasonable period, they shall become the property of the United States, but that shall not relieve the holder of liability for the cost of their removal and restoration of the site.

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

Group 3000—Minerals Management

PART 3000—MINERALS MANAGEMENT; GENERAL

Subpart 3000—General

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SOURCE: 35 FR 9669, June 13, 1970, unless otherwise noted.

Subpart 3000—General

§ 3000.0-5 Definitions.

As used in this subchapter:

(a) "Leasable minerals" means oil and gas. (1) Gas means any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at ordinary temperature and pressure conditions.

(2) Oil or crude oil means any liquid hydrocarbon substance which occurs naturally in the earth, including drip gasoline or other natural condensates recovered from gas, without resort to manufacturing process.

(b) "Other leasable minerals" means (1) Coal, chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium and sodium; sulphur in the States of Louisiana and New Mexico; phosphate; and native asphalt, solid and semisolid bitumen and bituminous rock (including oil impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried); (2) solid (hardrock) minerals; minerals in acquired lands which would be subject to location under the U.S. Mining laws if located in the public domain lands.

(c) "Secretary" means the Secretary of the Interior or any person duly authorized to exercise the powers vested in that officer.

(d) "Director" means the Director of the Bureau of Land Management or any person duly authorized to exercise the powers vested in that officer.

(e) "State Director" means the Director of a Bureau of Land Management State office or any person duly authorized to exercise the powers vested in that officer.

(f) "Authorized officer" means any person authorized by law or by lawful delegation of authority in the Bureau of Land Management to perform the duties described.

(g) "Proper BLM office" means the Bureau of Land Management office having jurisdiction over the lands subject to the regulation where the term is used.

(h) "Public domain lands" means original public domain lands which have never left Federal ownership; also, lands in Federal ownership which were obtained by the Government in exchange for public lands or for timber on such lands; also original public domain lands which have reverted to Federal ownership through operation of the public land laws.

(i) "Acquired lands" means lands which the United States obtains by deed through purchase or gift, or through condemnation proceedings. They are distinguished from public domain lands in that acquired lands may or may not have been originally owned by the Government. If originally owned by the Government such lands have been disposed of (patented) under the public land laws and thereafter reacquired by the United States.

(j) "Other lands" means (1) "Withdrawn lands." Lands which have been withdrawn and dedicated to public purposes.

(2) "Reserved lands." Lands which have been withdrawn from disposal and dedicated to a specific public purpose.

(3) "Segregated lands." Lands included in a withdrawal, or in an appli-

cation or entry or in a proper classification which segregates them from operation of the public land laws.

[38 FR 35082, Dec. 21, 1973]

§ 3000.0-7 Cross references.

36 CFR Chapter II.
41 CFR Part 60.
43 CFR Part 7.
43 CFR Part 17.
43 CFR Subpart 1840 and Subpart 1850.
43 CFR Subparts 2311, 2312, and 2315.
43 CFR Part 9230.

§ 3000.1 Civil Rights Act.

§ 3000.1-1 Nondiscrimination.

(See 43 CFR Part 17.)

§ 3000.1-2 Nonsegregated facilities.

(See 41 CFR Part 60.)

§ 3000.2 False statements.

18 U.S.C. 1001 makes it a crime for any person knowingly and wilfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statements as to any matter within its jurisdiction.

§ 3000.3 Unlawful interests.

(Officer, agent, or employee of the Department—See 43 CFR Part 7) (Member of Congress—See R.S. 3741; 41 U.S.C. sec. 22; and 18 U.S.C. secs. 431, 432, and 433.)

§ 3000.4 Appeals.

Any party to a case who is adversely affected by any official action or decision of an officer of the Bureau of Land Management or of an Administrative Law Judge of the Office of Hearings and Appeals, Office of the Secretary, except a decision which has been approved by the Secretary, shall have a right of appeal to the Board of Land Appeals in the Office of Hearings and Appeals, Office of the Secretary. All appeals shall be governed by the rules of practice in Subpart E of Part 4 of this title. Nothing in this group shall be construed to prevent any interested party from seeking judicial review as authorized by law,

[38 FR 35082, Dec. 21, 1973]

§ 3000.5 Place of filing.

§ 3000.5-1 Documents.

Documents must be filed in the proper office. A document will be considered filed when it is received in the proper office during business hours.

§ 3000.5-2 Location of offices.

See § 1821.2-1 for office location and area of jurisdiction.

§ 3000.6 Simultaneous applications or offers for lease.

§ 3000.6-1 Priority.

(a) Where applications or offers received by mail or filed over the counter at the same time are in conflict the right of priority of filing will be determined by public drawing.

(b) The priorities of all applications or offers to lease made and filed in accordance with the provisions of § 3112.2-1 whether or not they are in conflict, will be determined by public drawing in the manner provided in § 1821.2-3 of this chapter.

PART 3040—ENVIRONMENT AND SAFETY

Subpart 3045—Geophysical Explorations (Oil and Gas)

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3045.0-5 Definitions.
3045.0-7 Cross references.
3045.1 Notice of intent to conduct oil and gas operations.
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3045.3 Bond requirements.

Subpart 3045—Geophysical Explorations (Oil and Gas)

SOURCE: 35 FR 9670, June 13, 1970, unless otherwise noted.

§ 3045.0-1 Purposes.

The purpose of the regulations in this Subpart 3045 is to establish procedures to be followed in conducting exploration of the public land for oil and gas. For exploratory operations for other leasable minerals, the lease or permit required by the appropriate regulations must be secured. The regulations in this subpart are not applicable to exploration operations conducted pursuant to oil and gas lease, and also are not applicable to the exploration of public domain lands for minerals subject to location under the U.S. mining laws.

§ 3045.0-5 Definitions.

For the purpose of the regulations in this subpart:

(a) "Oil and gas exploration" means any activity relating to the search for evidence of oil and gas which required physical presence upon the land and which may result in damage to public lands or resources thereon. It includes, but is not limited to, geophysical operations, construction of roads and trails, and cross-country transit by vehicle over public domain. It does not include the casual use of public lands for oil and gas exploration. It does not include core drilling for subsurface geologic information or drilling for oil and gas; these activities will only be authorized by the issuance of an oil and gas lease. The regulations in this subpart, however, are not intended to prevent drilling operations necessary for placing explosive charges for seismic exploration, nor do they affect the exclusive right to "drill" for oil and gas by a lessee upon his leased premises.

(b) "Public lands" means lands owned by the United States and administered by the Bureau of Land Management. It does not include retained mineral interest in lands, title to which has passed from the United States.

(c) "Casual use" means activities that involve practices which do not ordinarily lead to any appreciable disturbance or damage to lands, resources, and improvements. For example, activities which do not involve use of heavy equipment or explosives and which do not involve vehicle movement except over established roads and trails are "casual use."

§ 3045.0-7 Cross references.

43 CFR 3104.9.
43 CFR 3104.9-5.

§ 3045.1 Notice of intent to conduct oil and gas operations.

§ 3045.1-1 Application.

(a) *Forms and where filed.* Any person desiring to conduct oil and gas exploration operations under the regulations of this subpart shall, prior to entry upon the lands, file with the District Manager of the Bureau of Land Management for the district in which the public lands are located a "Notice of Intent to Conduct Oil and Gas Exploration Operations," on a form approved by the Director.

(b) *Requirements.* The "Notice of Intent to Conduct Oil and Gas Exploration Operations" will contain the following:

(1) The name and address, including zip code, both of the person, association, or corporation for whom the operations will be conducted and of the person who will be in charge of the actual exploration activities.

(2) A statement that the signers agree that exploration operations will be conducted pursuant to the terms and conditions listed on the approved form.

(3) A brief description of the type of operations which will be undertaken.

(4) A description of the lands to be explored, by township and range.

(5) Approximate date of commencement of operations.

§ 3045.2 Completion of operations.

Upon completion of the exploratory operations, there shall be filed with the District Manager a "Notice of Completion of Oil and Gas Exploration Operations". Within 90 days after the filing of such "Notice of Completion", the District Manager shall notify the party who had conducted the operations whether all of the terms and conditions set out by the regulations in this subpart and in the "Notice of Intent to Conduct Oil and Gas Exploration Operations" have been complied with, or whether any additional measures must be taken to rectify any damage to the land, specifying the nature and extent thereof.

§ 3045.3 Bond requirements.

(a) Amount of bond and when filed (see § 3104.9).

(b) Termination of period of liability (see § 3104.9-5).

Group 3100—Oil and Gas Leasing

PART 3100—OIL AND GAS LEASING

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Subpart 3100—Oil and Gas Leasing; General

SOURCE: 35 FR 9670, June 13, 1970, unless otherwise noted.

§ 3100.0-3 Authority.

(a) *Public domain.* (1) The Act of February 25, 1920, as amended and supplemented (30 U.S.C. 181 et seq.).

(2) Prior to the filing of the notice of election hereinafter referred to, the Act of August 8, 1946 (60 Stat. 950; 30 U.S.C. 181) applies to leases issued prior to the date of that Act only where the amendatory act so provides. The owner of any lease issued prior to August 8, 1946, may elect pursuant to section 15 to come entirely under the provisions of that act by filing a notice of election to have his lease governed by the amendatory act, accompanied by the consent of the surety if there is a bond covering the lease. A notice of election so filed shall constitute an amendment of all provisions of the lease to conform with the provisions of the amendatory Act and the regulations issued hereunder.

(b) *Acquired lands.* The Mineral Leasing Act for Acquired Lands, enacted on August 7, 1947 (61 Stat. 913; 30 U.S.C. 351-359). The authority conferred upon the Secretary by the act, supersedes the authority conferred upon him by section 402 of Reorganization Plan No. 3, effective July 16, 1946 (3 CFR 1946 Supp., chapter IV) except as to leases or permits outstanding on August 7, 1947.

(c) *Withdrawn, reserved and segregated lands*—(1) *Protective leasing.* Issuance of protective leases authorized under sec. 441, Revised Statutes; 5 U.S.C. 485; see also Attorney General's Opinion of April 2, 1941 (Vol. 40 Op. Atty. Gen. 41).

(d) *Special Acts*—(1) *Rights-of-way.* The act of May 21, 1930 (46 Stat. 373; 30 U.S.C. 301-306), authorizes the Secretary of the Interior to lease deposits of oil and gas in and under railroad and other rights-of-way acquired under any law of the United States. The right of lease is restricted to the owner of the right-of-way, or his assignees.

(2) *Nevada.* The Act of May 9, 1942 (56 Stat. 273) as amended by the Act of October 25, 1949 (63 Stat. 886).

(3) *Lands patented to State of California.* The Act of March 3, 1933 (47 Stat. 1487) as amended by the Act of June 5, 1936 (49 Stat. 1482) and the Act of June 29, 1936 (49 Stat. 2026).

(4) *National Forest Lands in Minnesota.* The Act of June 30, 1950 (64 Stat. 311; 16 U.S.C. 508(b)).

(5) *Lake Mead Recreation Area.* The Act of October 8, 1964 (78 Stat. 1039; 16 U.S.C. 460n).

(6) *National Forest Wilderness.* Until midnight, December 31, 1983, all laws pertaining to mineral leasing and the regulations of this chapter pertaining thereto effective during such period, shall, to the same extent as applicable before September 3, 1964, extend to National Forest Wilderness, subject to the provisions of such regulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act.

(7) *Whiskeytown-Shasta-Trinity National Recreation Area.* Section 6 of the act of November 8, 1965 (Pub. L. 89-336; 79 Stat. 1295), authorizes the Secretary of the Interior to permit the removal of the nonleasable minerals from lands (or interest in lands) under his jurisdiction within the Whiskeytown-Shasta-Trinity National Recreation Area in the manner prescribed by section 10 of the Act of August 4, 1939, as amended (53 Stat. 1196; 43 U.S.C. 387), and from those under the jurisdiction of the Secretary of Agriculture with in the recreation area in accordance with the provisions of section 3 of the Act of September 1, 1949 (63 Stat. 683; 30 U.S.C. 192c); and he may permit the removal of leasable minerals from lands (or interest in lands) within the recreation area in accord-

ance with the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.), or the Acquired Lands Mineral Leasing Act of August 7, 1947 (30 U.S.C. 351-359), if he finds that such disposition would not have significant adverse effects on the purpose of the Central Valley project or the administration of the recreation area.

[35 FR 9670, June 13, 1970, as amended at 41 FR 29122, July 15, 1976]

§ 3100.0-5 Definitions.

(a) *Known geologic structure.* A known geologic structure is technically the trap in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive.

(b) "Sole party in interest" means a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, a sole party in interest with respect to an application, offer or lease in which any other party has any of the interests described in this section. The requirements of disclosure in any application or offer of an applicant's or other parties' interest in a lease, if issued, reflect the policy that all applicants and other parties having an interest in simultaneously filed lease applications or offers to lease shall have an equal opportunity for success in the drawings to determaine priorities. Additionally, such disclosures provide the means of maintaining adequate records of acreage holding. An "interest" in the least includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options or any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease, and any participation or any defined or undefined share in any increments, issues or profits which may be derived from or which may accrue in any manner from the lease based upon or pursuant to any aggrement or understanding existing at the time when the application or offer is filed, is deemed to constitute an "interest" in such lease.

(c) *Area oil and gas supervisor.* The Regional Oil and Gas Supervisor of the Geological Survey for the region in which lands under lease are situated.

(d) "Person or entity in the business of providing assistance to participants in a Federal oil and gas leasing program" means those offering services for consideration in connection with the acquisition of Federal oil and gas leases. Included in this definition are those enterprises, commonly known as filing services, which sign, formulate, prepare, offer advice on formulation or preparation, mail, deliver, receive mail or otherwise complete or file lease applications or offers for consideration. Excluded from the definition are those services which only tangentially relate to Federal oil and gas lease acquisition, such as general secretarial assistance, or general geologic advice which is not specifically related to Federal lease parcels or leasing.

[35 FR 9670, June 13, 1970, as amended at 45 FR 35160, May 23, 1980]

§ 3100.0-7 Cross reference.

43 CFR Part 16.

§ 3100.0-9 Limitation on time to institute suit to contest a Secretary's decision.

No action contesting a decision of the Secretary involving any oil and gas lease shall be maintained unless such action is commenced or taken within 90 days after the final decision of the Secretary relating to such matter.

§ 3100.1 Helium.

§ 3100.1-1 Ownership and rights.

The ownership of and the right to extract helium from all gas produced from lands leased or otherwise disposed of under the Act have been reserved to the United States. Appropriate provision is made in leases with respect to the recovery of helium. (See 43 CFR Part 16.)

§ 3100.2 Minerals subject to leasing.

§ 3100.2-1 Oil and gas.

§ 3100.3 Drainage.

§ 3100.3-1 Compensation for drainage.

Upon a determination by the Director of the Geological Survey that lands owned by the United States are being drained of oil or gas by wells drilled on adjacent lands, the authorized officer of the Bureau of Land Management, may execute agreements with the owners of adjacent lands whereby the United States, or the United States and its lessees, shall be compensated for such drainage, such agreements to be made with the consent of any lessee affected thereby. The precise nature of any agreement will depend on the conditions and circumstances involved in the particular case.

§ 3100.3-2 Drilling or payment of compensatory royalty.

Where land in any lease is being drained of its oil or gas content by a well either on a Federal lease issued at a lower rate of royalty or on land not the property of the United States, the lessee must drill and produce all wells necessary to protect the leased lands from drainage. In lieu of drilling such wells, the lessee may, with the consent of the Director of the Geological Survey, pay compensatory royalty in the amount determined in accordance with 30 CFR 221.21.

§ 3100.3-3 Protective leasing.

Where jurisdiction over disposition of mineral deposits in land set apart for other Government agencies has been transferred to the Department of the Interior because of drainage of its oil or gas content, such land must be offered for lease by competitive bidding. Protective leases may cover public domain lands which have been withdrawn from oil or gas leasing or acquired lands not subject to leasing under the Acquired Lands Leasing Act.

§ 3100.4 Multiple development.

The granting of a permit or lease for the prospecting, development, or production of deposits of any one mineral will not preclude the issuance of other permits or leases for the same land for deposits of other minerals with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations, or selections of leased lands with a reservation of the mineral deposits to the United States.

§ 3100.5 Options.

§ 3100.5-1 Enforceability.

(a) *Approval of Secretary required.* No option to acquire any interests in an oil and gas lease shall be enforceable if entered into for a period of more than 3 years (inclusive of any renewal period, if provided for in the option) without the prior approval of the Secretary.

(b) *Notice required.* No option or renewal thereof executed after September, 1960, shall be enforceable until notice thereof has been filed in the proper office. No such notice shall be required for options or renewals executed prior to September 2, 1960. Each such notice shall include (1) the names and addresses of the parties thereto; (2) the serial number of the lease or application for lease to which the option is applicable; (3) a statement of the number of acres covered thereby and of the interests and obligations of the parties thereto; and (4) the interest to be conveyed and retained on exercise of the option. Such notice shall be subscribed by all parties to the option or their duly authorized agents. The filing of an executed copy of the option containing the above information shall satisfy the foregoing requirement. In addition, the notice of option must contain or be accompanied by a signed statement, by the holder of the option, that he is the sole party in interest in the option; if not, he shall set forth the names and nature and extent of the interest therein of the other interested parties, the nature of the agreement between them if oral, and a copy of such agreement, if written.

§ 3100.5-2 Chargeable acreage.

(a) *How charged.* The acreage to which the option is applicable shall be charged both to the optionor and to the optionee, but the charge to the optionor shall cease when the option is exercised. If the option covers only a part of the optionor's interest in the acreage included in a lease, the acreage to which the option is applicable shall be fully charged to the optionor, and a share thereof shall also be charged to the optionee as his interest may appear. Upon the exercise of the option, the acreage shall be charged to the parties pro rata as their interests may appear. An unexercised option remains charged during its term until notice of its relinquishment or surrender has been filed in the proper office.

(b) *When charged.* Within the meaning of this section, options may be taken only on lands embraced in leases and offers or applications for leases and the acreage included in any such option taken upon an application or offer for a lease shall be chargeable from and after the date of such option.

§ 3100.5-3 Period of option.

Except as provided in § 312.4-3 of this title, an option taken on a lease application or offer may be for a period of time until issuance of the lease and 3 years thereafter. Where options are sought for longer priods, an application shall be filed with the authorized officer of the Bureau of Land Management, accompanied by a complete showing as to the special or unusual circumstances which are believed to justify approval of the application.

[45 FR 35161, May 23, 1980]

§ 3100.5-4 Acreage in cooperative or unit plan.

It shall be permissible for any such option to provide that where all or any part of the land covered thereby is included in a cooperative or unit plan (as defined in § 3105.1) duly executed by the parties and submitted to the Secretary for final approval prior to the expiration of the three-year option period, then, as to that part of the land covered by said option which is included in said cooperative or unit plan, such option shall not expire until a date 30 days after the date of final approval or disapproval by the Secretary of that cooperative or unit plan.

§ 3100.5-5 Option statements.

Each holder of an option must file in the proper office within 90 days after June 30 and December 31 of each year duplicate statements showing as of the prior June 30 and December 31, respectively (a) his name and the name and address of each grantor of an option held by him, the serial number of every lease, application or offer for lease subject to option; (b) date and expiration date of each option; (c) number of acres covered by each option; (d) aggregate number of options held in each State, and total acreage thereof; and (e) a statement of his interest and obligation under each option; provided, that the statement of his interest and obligation with respect to any option shall not be required where such interests and obligations have been set forth in the notice required under § 3100.5-1(b) of this section and there have been no changes in such interests and obligations since such filing. Option statements covering lands in the State of California shall be filed in the proper office at Sacramento, California. The failure of the holder of an option to file such statement shall render the option unenforceable by him, but this shall not diminish the acreage deemed to be held under option by the optionee in computing the amount chargeable and shall not relieve any party thereto of any liability to cancellation, forfeiture, forced disposition, or other sanction provided by law. If the statement shows or it is otherwise ascertained that the optionee holds options in excess of the prescribed limitation, he will be given 30 days within which to file proof of reduction of his option holdings to the limitations prescribed by the act.

§ 3100.6 Leases within unit areas.

§ 3100.6-1 Joinder evidence required.

Before issuance of an oil and gas lease for lands within an approved unit agreement, the lease applicant or offeror or successful bidder will be required to file evidence that he has entered into an agreement with the unit operator for the development and operation of the lands in his lease under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, he will be permitted to operate independently but will be required to conform to the terms and provisions of the agreement with respect to such operations.

§ 3100.6-2 Separate leases to issue.

In case an application or offer for a noncompetitive lease embracing lands partly within and partly without the exterior boundaries of a unitized area is found acceptable, separate leases will be issued, one embracing the lands within the unit area, and one the lands outside of such area.

§ 3100.7 Boundaries of known geologic structures.

§ 3100.7-1 Determination by Geological Survey.

The Director of the Geological Survey will determine the boundaries of the known geologic structures of producing oil or gas fields, and, where necessary to effectuate the purposes of the act, the productive limits of producing oil or gas deposits as such limits existed on August 8, 1946.

§ 3100.7-2 Notice of determination.

Determinations of "structures defined" will be followed, as soon as practicable, by the filing in the proper office of maps or diagrams showing the structure boundaries, and by publication in the FEDERAL REGISTER of notices that the determinations have been made. Because determinations of "structures undefined" are usually of a more temporary nature, maps or diagrams thereof will not be filed and notices thereof will not be published; however, a memorandum of each such determination will be filed in the proper office and will be available for public inspection. Additional information concerning the procedures used in making the determinations may be obtained from the Geological Survey Washington, D.C. 20240.

§ 3100.7-3 Date determinative of rights.

In accordance with long-standing rulings of the Department, if the producing character of a structure underlying a tract of land is actually known prior to the date of the Department's official pronouncement on that subject, it is the date of the ascertainment of the fact, and not the date of the pronouncement, that is determinative of rights which depend upon whether the land is or is not situated within a known geologic structure of a producing oil or gas field. Ernest A. Hanson, A-26375 (May 29, 1952), and cases cited therein. All determinations are subject to change at any time upon receipt of further information through the drilling of wells and other sources. Accordingly, lessees or applicants for leases should not rely upon the maps, diagrams, determinations or notices thereof, as currently controlling documents.

§ 3100.7-4 Request for determination.

Any lessee or his operator may apply to the Director of the Geological Survey for a determination whether the land in his lease is inside or outside the productive limits of a producing oil or gas deposit as such limits existed on August 8, 1946.

Subpart 3101—Lands Subject to Leasing

SOURCE: 35 FR 9674, June 13, 1970 unless otherwise noted.

§ 3101.1 Public domain.

§ 3101.1-1 Availability of lands.

(a) All public domain lands subject to disposition under the Act may be leased by the Secretary of the Interior. Lands within a known geologic structure of a producing oil or gas filed shall be leased only by competitive bidding to the highest responsible qualified bidder. Other public domain lands shall be leased only noncompetitively to the first qualified applicant.

(b) Public domain lands not subject to leasing:

(1) National parks and monuments.

(2) Indian reservations.

(3) Incorporated cities, town, and villages.

(4) Naval petroleum and oil shale reserves and national petroleum reserves.

(5) Lands within 1 mile of naval or national petroleum or helium reserves shall not be leased unless the land is being drained of its oil or gas deposits or helium content by wells on privately owned land or unless it is determined by the authorized officer, after consultation with agency exercising jurisdiction over the reserve, that operations under such a lease will not adversely affect the reserve through drainage from known productive horizons.

(c) The availability of acquired lands for oil and gas leasing is set out in § 3101.2-1 of this title.

[45 FR 35161, May 23, 1980]

§ 3101.1-2 Lands in entries or claims not impressed with reservation of oil and gas.

(a) Where an offer is filed to lease lands noncompetitively in an entry or settlement claim not impressed with an oil or gas reservation, the offer will be rejected unless it is found that the land is prospectively valuable for oil or gas. An offeror for a lease for land already embraced in a nonmineral entry without a reservation of the mineral, and likewise a nonmineral entryman or settler who is contending that the land is nonmineral in character should submit with their respective offer and application, showings of as complete and accurate geologic data as may be procurable, preferably the reports and opinions of qualified experts.

(b) Should the land be found to be prospectively valuable for oil or gas, the entryman or settler will be notified thereof and allowed a reasonable time to apply for reclassification of the land as nonmineral, submitting a showing therewith, and to apply for a hearing in the event that reclassification is denied, or to appeal. If he does neither, or he is unsuccessful, the entry or settlement rights and any patent issued pursuant thereto will be impressed with a reservation of oil and gas to the United States. In such circumstances a lease will be granted to the offeror, all else being regular, unless the entryman or settler has a preference right.

§ 3101.1-3 Unsurveyed lands.

(a) *Showing required.* Every offeror for oil and gas lease for unsurveyed lands, must state in his offer that there are no settlers upon the land, or if there be settlers, give the name and post office address of each and a description of the lands claimed, by metes and bounds and approximate legal subdivisions.

(b) *Survey for leasing (competitive).* The survey of unsurveyed lands for a competitive lease for oil and gas will be made at the expense of the Government prior to the issuance of a lease of the lands.

§ 3101.1-4 Description of lands in offer.

(a) *Surveyed lands.* If the lands have been surveyed under the public land rectangular system, each offer must describe the lands by legal subdivision, section, township, and range.

(b) *Unsurveyed lands.* If the lands have not been so surveyed, each offer must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys. In Alaska the description of unsurveyed lands must be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by any agency of the United States (such as the U.S. Geological Survey, the Coast and Geodetic Survey, or the International Boundary Commission), if the record position thereof is available to the general public.

(c) *Unsurveyed public lands adjacent to tidal waters in southern Louisiana and in Alaska.* In lease offers embracing unsurveyed public lands adjacent to tidal waters in southern Louisiana and in Alaska, if the offeror finds it impracticable to furnish a metes and bounds description, as required in paragraph (b) of this section with respect to the water boundary, he may, at his option, extend the boundary of his offer into the water a distance sufficient to permit complete enclosure of the water boundary of his offer by a series of courses and distances in cardinal directions (the object being to eliminate the necessity of describing the meanders of the water boundary of the public lands included in the offer). The description in the lease offer shall in all other respects conform to the requirements of paragraph (a) of this section. Such description would not be deemed for any purpose to describe the true water boundaries of the lease, such boundaries in all cases being the ordinary high water mark of the navigable water. The land boundaries of such overall area shall include only the public lands embraced in the offer. The offeror shall agree to pay rental on the full acreage included within the description with the understanding that rights under any lease to be issued on that offer will apply only to the areas within that description properly subject to lease under the act, but that the total area described will be considered as the lease acreage for purposes of rental payments, acreage limitations under § 3101.1-5 and the maximum or minimum area to be included in a lease pursuant to § 3111.1. The tract should be shown in outline on a current quadrangle sheet published by the U.S. Geological Survey or such other map as will adequately identify the lands described.

(d) *Protracted surveys.* (1) When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all offers to lease lands shown on such protracted surveys, filed on or after such effective date, must, except as provided below, include only entire sections described according to the section, township, and range shown on the approved protracted surveys.

(2) An offer may include less than an entire protracted section where only a portion of such a section is available for lease. In such case the offer must describe all the available lands by subdivisional parts in the same manner as provided in paragraph (a) of this section for officially surveyed lands. If this is not feasible, as e.g., in the case of an irregular section, the offer must describe the entire section and contain a statement that it shall be deemed to include all of the land in the described section which is available for lease.

(e) *Conforming land descriptions.* The descriptions in leases issued pursuant to offers filed after the effective date of this section will be conformed to the subdivisions of the approved protracted surveys if and when such surveys have been adopted for the area; and the description and acreage of leases issued pursuant to offers filed after May 22, 1959, will be adjusted to the official public land surveys when such surveys have been extended over the leased area.

§ 3101.1-5 Acreage limitations.

(a) *Maximum holdings.* No person, association, or corporation shall take hold, own, or control at one time oil and gas leases (including options for such leases or interests therein) whether directly through ownership of leases or interests in leases and applications, or offers therefor or indirectly as a member of an association or associations or as a stockholder of a corporation or corporations, holding leases or interests therein and applications or offers therefor for more than 246,080 acres in any one State, of which no more than 200,000 acres may be held under option.

(1) *Exception.* (i) In the State of Alaska the acreage limitation is 300,000 acres in the northern leasing district and 300,000 acres in the southern leasing district, of which no more than 200,000 acres may be held under option in each of the two leasing districts.

(ii) The boundary between the two leasing districts in the State of Alaska is the left limit of the Tanana River from the boundary between the United States and Canada to the confluence of the Tanana River and Yukon River and the left limit of the Yukon River from said confluence to its principal southern mouth.

(b) *Excepted acreage.* Leases or offers or applications for leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior shall not be included in computing accountable acreage. Leases or offers or applications for leases subject to an operating, drilling or development contract approved by the Secretary of the Interior pursuant to section 17(j) of the Act, other than communization agreements, shall be excepted in determining the accountable acreage of the lessees or operators.

(c) *Excess acreage.* (1) Where, as the result of the termination or contraction of a unit or cooperative plan, or the elimination of a lease from operating drilling, or development plan, a party holds or controls excess accountable acreage, such party shall have 90 days from such termination or contraction or elimination in which to reduce his holdings to the prescribed limitation and to file proof of such reduction in the proper office.

(2) If any person holding or controlling only leases or interests in leases or options or interests in options is found to hold accountable acreage in violation of the provisions of this section and of the act, the last lease or leases or interest or interests acquired by him which with the options or interests in options created the excess acreage holdings shall be canceled or forfeited in their entirely, even though only part of the acreage in the lease or interest constitutes excess holdings, unless it can be shown to the satisfaction of the Director of the Bureau of Land Management that the holding or control of the excess acreage is not the result of negligence or willful intent in which event the lease or leases shall be canceled only to the extent of the excess acreage.

(3) Any person holding or controlling leases or interests in leases only, or applications or offers for leases only, or both leases or interest in leases and applications or offers or options or interests in options below the acreage limitation provided in this section, shall be subject to these rules:

(i) If he files an application or offer or option or interest in option which causes him to exceed the acreage limitation, that application or offer will be rejected.

(ii) For tracts not subject to the simultaneous filing procedures of Subpart 3112, if he files a group of applications or options or offers or interests in options at the same time, any one of which causes him to exceed the acreage limitations the entire group applications, offers, options, or interests in options will be rejected.

(iii) If any party files an application for inclusion in the selection process under Subpart 3112, he/she shall be charged with the acreage thereof only if the application is successfully selected. If that application causes his/her to exceed the acreage limitation, the application shall be rejected.

(iv) An optionee is chargeable only for that acreage for which the optionor is chargeable.

(4) If any person holding or controlling both leases or interests in leases and applications or offers for leases, or options or interests in options or only applications or offers for leases below the acreage limitation provided in this section, acquires a lease or leases, or an option or options or interests therein; which cause him to exceed the acreage limitation, his most recently filed application or offer for lease or applications or offers for lease then containing acreage in excess of the limitation provided in this section will be rejected in its or their entirety. For the purpose of this subparagraph, time of filing shall be determined by the time of filing marked on the application or offer or if the same time is marked on two or more applications or offers, by the serial number of the applications or offers.

(5) The provisions of this paragraph shall not limit any action which the Department may take with respect to excess acreage holdings in cases not otherwise covered by this paragraph.

(6) An association shall not be deemed to exist between the parties to a contract for development of leased lands, whether or not coupled with an interest in the lease, nor between co-lessees, but each party to any such contract or each co-lessee will be charged with his proportionate interest in the lease. No holding of acreage in common by the same persons in excess of the maximum acreage specified in the law for any one lessee or permittee for the particular mineral deposit so held will be permitted.

(d) *Computation.* In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease shall be such party's proportionate part of the total lease acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of the corporation's or association's accountable acreage, except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation unless he is the beneficial owner of more than ten per centum of the stock or other instruments of ownership or control of such association or corporation. An option held by a corporation or an association on September 2, 1960, shall not, for a period of 3 years, be charged to any stockholder of the corporation or member of the association so long as it is so held. Parties owning a royalty or other interest determined by or payable out of a percentage of production from a lease will be charged with a similar percentage of the total lease acreage.

(e) *Showing required.* No lease will be issued and no transfer or operating agreement will be approved until it has been shown that the offeror, transferee, or operator is entitled to hold the acreage or obtain the operating rights. At any time upon request by the authorized officer of the Bureau of Land Management, the record title holder of any lease or a lease operator or a lease offeror or the holder of any lease option may be required to file in the proper office a statement, showing as of a specified date the serial number and the date of each lease of which he is the record holder, or under which he holds operating rights, or for which he holds an option, and each application or offer for lease held or filed by him in the particular State setting forth the acreage covered thereby, and the nature, extent and acreage interest, including royalty interests held by him in any oil and gas lease of which the reporting party is not the lessee of record, whether by corporate stock ownership, interest in unincorporated associations and partnerships, or in any other manner.

[35 FR 9674, June 13, 1970, as amended at 45 FR 35161, May 23, 1980]

§ 3101.1-6 Effect of Multiple Mineral Development Act of August 13, 1954.

If any oil and gas lease issued under Section 17 of the Mineral Leasing Act, as amended (30 U.S.C. sec. 226), includes an area with respect to which a verified statement is filed by a mining claimant under section 7(c) of the Multiple Mineral Development Act of 1954 (68 Stat. 708), as amended, asserting the existence of a conflicting unpatented mining claim or claims upon which diligent work is being prosecuted the payment of rentals and the running of time under such lease shall be suspended as to the lands in conflict from the first day of the month following the filing of such verified statement until a final decision is rendered in the matter.

§ 3101.2 Acquired lands.

§ 3101.2-1 Availability of lands.

(a) All acquired lands subject to disposition under the Act may be leased by the Secretary of the Interior. Lands within a known geological structure of a producing oil or gas field shall be leased only by competitive bidding. Other acquired lands shall be leased only non-competitively to the first qualified applicant.

(b) Acquired lands not subject to leasing include lands:

(1) Acquired for the development of their mineral deposits;

(2) Acquired by foreclosure or otherwise for resale;

(3) Reported as surplus under the Surplus Property Act of October 3, 1944 (50 U.S.C. 1611 et seq.);

(4) In incorporated cities, towns and villages;

(5) In national parks and monuments;

(6)Within naval petroleum and oil shale reserves and within the national petroleum reserves; or

(7) Which are tide lands, submerged coastal lands, within the continental shelf adjacent or littoral to any part of lands within the jurisdiction of the United States.

(c) The availability of public domain lands for oil and gas leasing is set forth in § 3101.1-1 of this title.

[45 FR 35161, May 23, 1980]

§ 3101.2-2 Sale or conveyance of lands.

Any sale or conveyance of lands subject to the act by the agency having jurisdiction thereof, shall be subject to any lease or permit theretofore issued under the act.

§ 3101.2-3 Description of lands in offer.

(a) *Surveyed lands.* If the land has been surveyed under the rectangular system of public land surveys, and the description can be conformed to that system, the land must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land surveys, any boundaries which do not so conform must be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner. If not so surveyed and if within the area of the public land surveys, the land must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected with a reasonably nearby corner of those surveys by courses and distances.

(b) (1) *Lands not surveyed under the rectangular survey system.* If the lands have not been surveyed under the rectangular system of public land surveys, and the tract is not within the area of the public land surveys, it must be described as in the deed or other document by which the United States acquired title to the lands or minerals. If the desired land constitutes less than the entire tract acquired by the United States, it must be described by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the land. In addition, if the description in the deed or other document by which the United States acquired title to the lands does not include the courses and distances between the successive angle points on the boundary of the desired tract, the description in the offer must be expanded to include such courses and distances.

(2) Each offer or application must be accompanied by a map upon which the desired lands are clearly marked showing their location with respect to the administrative unit or project of which they are a part (such map need not be submitted where the desired lands have been surveyed under the rectangular system of public land surveys, and the land description can be conformed to that system).

(3) If an acquisition tract number has been assigned by the acquiring agency to the identical tract desired, a description by such tract number will be accepted. Such offer or application must be accompanied by the map required by paragraph (b)(2) of this section.

(c) *Accreted lands.* Where an offer or application includes any accreted lands that are not described in the deed to the United States, such accreted lands must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions appertain.

§ 3101.2-4 Acreage limitation.

The amount of acquired lands acreage that may be held under lease or permit either directly or indirectly, individually or as a member of an association or a corporation may not be in excess of the amount of public domain acreage for the same minerals permitted to be held under the mineral leasing laws. Public domain lease holdings shall not be charged against acquired lands lease holdings, such respective holdings shall not be interchargeable. Where the United States owns only a fractional interest in the mineral resources of the lands involved, only that part of the total acreage involved in the lease which is proportionate to the ownership by the United States of the mineral resources therein shall be charged as acreage holdings. The acreage embraced in a future interest lease is not to be charged as acreage holdings until the lease for the future interest takes effect.

§ 3101.2-5 Present interest.

(a) *Full and fractional.* Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such results will be rejected.

§ 3101.2-6 Future interest.

(a) *Full or fractional.* A noncompetitive lease for a whole or fractional future interest will be issued only to an offeror who owns all or substantially all of the present operating rights to the minerals in the lands in the offer as mineral fee owner, as lessee or as operator holding such rights.

§ 3101.2-7 Exchange of leases.

Oil and gas leases, outstanding on August 7, 1947, and which cover lands subject to the act, may be exchanged for new leases to be issued under the act. New leases shall be issued for a term of 5 years and so long thereafter as oil or gas is produced in paying quantities, and shall be dated to be effective as of the first of the month after the filing of the application to exchange. The rental rates for the new lease, for lands not within the known geologic structure of a producing oil or gas field at the time of the filing of the application for exchange, shall be the same as those set forth in § 3103.3-2, and the royalty rate for such lands shall be 12½ percent. For all other lands, the rental rate for the new lease shall be $1 per acre per annum, and the royalty requirements shall be the same as those stipulated in the lease offered in exchange.

§ 3101.3 Withdrawn, reserved, and segregated lands.

§ 3101.3-1 Drainage.

In instances where it is determined by the Geological Survey that any of the lands mentioned in § 3101.3-3 of this section and defined in this section as not available for leasing are subject to drainage, the Bureau of Land Management, with the concurrence of the U.S. Fish and Wildlife Service, will process an offering inviting competitive bids in accordance with the then existing regulations relating to competitive oil and gas leasing. Such leases shall be issued only upon approval by the Secretary of the Interior and shall contain such stipulations as are necessary to assure that leasing activities and drilling shall be carried out in such a manner as will result in a minimum of damage to wildlife resources.

§ 3101.3-2 Requirements.

(a) *Publication and filing of agreements.* The agreements referred to in § 3101.3-3 of this section shall be published in the FEDERAL REGISTER and shall contain a description of the lands affected thereby which are not subject to oil and gas leasing, together with a statement of the stipulations agreed upon by the parties thereto for inclusion in such leases to assure that all operations under the lease shall be carried out in such a manner as will result in a minimum of damage to wildlife resources. The agreements, as supplemented by maps or plats specifically delineating the lands will be filed in the proper offices of the Bureau of Land Management where they may be inspected by the public at the usual hours specified for that purpose.

(b) *Filing of lease offers.* Lease offers for such lands will not be accepted for filing until the 10th day after the agreements and supplemental maps or plats are noted on the land office records.

(c) *Suspension of pending applications.* (1) All pending offers or applications heretofore filed for oil and gas leases covering game ranges, coordination lands, and Alaska wildlife areas, will continue to be suspended until the agreements referred to in § 3101.3-3(b)(1) of this section shall have been completed.

(2) *Proposed withdrawals.* All existing offers or applications for oil and gas leases covering lands included in request for withdrawals for wildlife refuges, game ranges, coordination lands or Alaska wildlife areas, as defined herein, shall be suspended until

after the consummation of the withdrawal, and thereafter such offers shall be considered in accordance with the provisions of this section.

(d) *Special stipulations.* For inclusion in oil and gas leases entered into pursuant to this section relating to oil and gas leases in wildlife refuge, game range, and coordination lands.

Instructions. (1) The following stipulations will be made a part of Interior Department lease forms. These stipulations will be made applicable as terms and conditions of performance by lessees under all oil and gas leases entered into under authority vested in the Secretary of the Interior over game range, coordination or Alaska Wildlife lands pursuant to the order of the Secretary of the Interior published in 23 FR 227, January 11, 1958.

(2) Should compliance with one or more of these terms and conditions be considered unduly burdensome and unnecessary to the protection of wildlife resources, the lessee may request waiver thereof by letter addressed to the Secretary of the Interior setting forth, in full, the reasons why a waiver is considered necessary. The authority to grant such waivers shall be discretionary and may be exercised only by the Secretary or the Under Secretary of the Interior.

(3) The authorized officer shall (a) approve no plan of operation that contains provisions inconsistent with the stipulations hereinafter set forth; (b) waive no term or condition in a lease; or (c) exercise no discretion vested in him unless he is satisfied the exercise of that discretion will not damage any wildlife resource.

(4) Drilling and production operations under the lease shall be under the direction of the Geological Survey.

Terms and conditions. (1) As used herein:

(a) The term "lessee" includes the lessee, heirs and assigns of the lessee and persons operating on behalf of the lessee;

(b) The term "wildlife resources" includes fish and wildlife resources and concentrations, fish and wildlife management operations and range improvements and facilities;

(c) The term "authorized officer" means the State Director of the Bureau of Land Management in the State in which the land is located, and, in Alaska, the Refuge Manager of the Bureau of Sport Fisheries and Wildlife;

(2) The lessee shall:

(a) Comply with all the rules and regulations of the Secretary of the Interior;

(b) Prior to the beginning of operations, appoint and maintain at all times during the term of the lease a local agent upon whom may be served written orders or notices respecting matters contained in these stipulations and to inform the authorized officer in writing of the name and address of such agent. If a substitute agent is appointed, the lessee shall immediately inform the said representative;

(c) Conduct all authorized activities in a manner satisfactory to the authorized officer with due regard for good land management and avoid damage to improvements, timber, crops, and wildlife cover, and fill all sump holes, ditches, and other excavations or cover all debris, and so far as reasonably possible, restore the surface of the leased lands to their former condition and when required to bury all pipelines below plow depth. The authorized officer shall have the right to enter all the premises at any time to inspect both the installation and operational activities of the lessee;

(d) Take such steps as may be necessary to prevent damage to wildlife;

(e) Do all in his power to prevent and suppress forest, brush, or grass fires and to require his employees, contractors, subcontractors and employees of contractors or subcontractors to do likewise;

(f) Install adequate blow-out prevention equipment;

(g) Construct ring dikes and sump pits to confine drilling mud and other pollutants and make safe disposition of salt water by use of injection wells or such other method as may be approved in the plan of operation;

(h) Cover flare pits in areas of wildlife concentration;

(i) Remove derricks, dikes, equipment, and structures not required in producing operations within 60 days after the completion of drilling;

(j) Comply with and see to it that his agents and employees comply with all Federal, State, or Territorial laws relating to hunting, fishing, and trapping;

(k) Commit the lease to any unit plan required in the interest of conservation of oil or gas resources or for the protection of wildlife;

(l) Prior to the conduct of geological, geophysical, or core drilling operations or construction of any facilities, or prior to operations to drill or produce, submit in triplicate for approval in writing by the authorized officer a plan of operation that will include detailed statements indicating the manner in which the lessee will comply with these stipulations together with a statement that the lessee agrees that compliance with these stipulations and with the approved plan of operations are conditions of performance under this lease and that failure to comply with these provisions (unless they are waived by the Secretary or the Under Secretary of the Interior) will be grounds for cancellation of the lease by the United States. Notwithstanding other provisions in these stipulations, the lessee shall include in any plan of operation specific provisions relating to: The time, place, depth and strength of seismographic shots, maps showing the location of his leases included in the plan, actual and proposed access roads, bunkhouses, proposed well locations, storage and utility facilities, water storage, pipelines and pumping stations; the type of safety equipment that will be employed; the methods to be used to assure the disposition of drilling mud, pollutants, and other debris; the location of facilities in relation to flood levels; and such other specific matters as the authorized officer may require. The plan of operation shall be kept current in all respects and all revisions and amendments submitted to the authorized officer for written approval;

(m) Do all things reasonably necessary to prevent or reduce to the fullest extent scarring and erosion of the land, pollution of the water resources and any damage to the watershed. Where construction, operation, or maintenance of any of the facilities on or connected with this lease causes damage to the watershed or pollution of the water resource, the lessee agrees to repair such damage, including reseeding and to take such corrective measures to prevent further pollution or damage to the watershed as are deemed necessary by the authorized officer;

(n) File the bond required by section 2a (4) of the lease before conducting any operations on the leasehold, and file any additional bond required by the authorized officer to pay for damages to wildlife habitat, including trees and shrubs, or wildlife improvements;

(o) Agree to respect and comply with any new requirements imposed by the Secretary of the Interior, or the authorized officer, on the operating program as operating experience proves necessary in order to give complete protection to wildlife populations and wildlife habitat on the areas leased.

(3) The lessee shall not:

(a) Construct roads, pipelines, utility lines, and attendant facilities that are either unnecessary or which might interfere with wildlife habitat or resources or with drainage;

(b) Modify or change the character of streams, lakes, ponds, water holes, seeps, and marshes, except by advance approval in writing by the authorized officer, nor shall he in any way pollute such streams, lakes ponds, water holes, seeps, or marshes;

(c) Conduct operations at such times as will interfere with wildlife concentrations;

(d) Conduct geological or geophysical explorations that might damage any wildlife resource and such operations shall be conducted only in accordance with advance approval in writing by the authorized officer as to the time, manner of travel and disturbances of surfaces and the facilities required for the protection of wildlife;

(e) Use explosives in fish spawning or rearing areas, nesting areas, lambing grounds, or other areas of wildlife concentration during periods of intense activity or at any other time or in any manner that might damage any wildlife resources; the pattern, size, and depth of seismographic shots shall be submitted to the authorized officer for advance approval in writing and immediately following the detonation of any seismographic charge, the hole shall be filled or plugged and any surface damage repaired to the satisfaction of the authorized officer;

(f) Without advance approval in writing, use any water or water source controlled or developed by the United States;

(g) Use mobile equipment under such conditions as to permanently damage surface resources, cause scarring and erosion, or interfere with wildlife concentration;

(h) Conduct geological, or geophysical, or core drilling operations or construct roads bunkhouses or any facilities or drill or produce under a lease until the submittal and approval in writing of a plan of operation pursuant to section (2)(m) supra or deviate therefrom until any revisions or amendments of said plan have been approved in writing by the authorized officer;

(i) Burn rubbish, trash, or other inflammable materials or use explosives in a manner or at a time that would constitute a fire hazards.

§ 3101.3-3 Reserved and segregated lands.

(a) *Wildlife refuge lands.* Such lands are those embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the U.S. Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes or, by the terms of the withdrawal order, may be subject to mineral leasing.

(1) *Leasing.* No offers for oil and gas leases covering wildlife refuge lands will be accepted and no leases covering such lands will be issued except as provided in § 3101.3-1. There shall be no drilling or prospecting under any lease heretofore or hereafter issued on lands within a wildlife refuge except with the consent and approval of the Secretary of the Interior with the con-

currence of the Fish and Wildlife Service as to the time, place and nature of such operations in order to give complete protection to wildlife populations and wildlife habitat on the areas leased, and all such operations shall be conducted in accordance with the stipulations of the Bureau of Land Management on a form approved by the Director.

(b) *Game range lands and Alaska wildlife areas.* Game ranges created by a withdrawal of public lands and reserved for dual purposes, namely, protection and improvement of the public grazing lands and natural forage resources and conservation and development of natural wildlife resources are under the joint jurisdiction of the Bureau of Land Management and the U.S. Fish and Wildlife Service. Alaska wildlife areas are areas in Alaska created by a withdrawal of public lands for the management of natural wildlife resources and administered by the U.S. Fish and Wildlife Service.

(1) *Leasing.* As to game range lands and Alaska wildlife areas, representatives of the appropriate office of the Bureau of Land Management and the U.S. Fish and Wildlife Service will confer for the purpose of entering into an agreement specifying those lands which shall not be subject to oil and gas leasing. No such agreement shall become effective, however, until approved by the Secretary of the Interior. Lands not closed to oil and gas leasing will be subject to leasing on the imposition of such stipulations agreed upon by the U.S. Fish and Wildlife Service and the Bureau of Land Management.

(c) *Coordination lands.* These lands are withdrawn or acquired by the Government and made available to the States by cooperative agreements entered into between the U.S. Fish and Wildlife Service and the game commissions of the various States, in accordance with the act of March 10, 1934 (48 Stat. 401), as amended by the Act of August 14, 1946 (60 Stat. 1080), or by long-term leases or agreements between the Department of Agriculture and the game commissions of the various States pursuant to the Bankhead-Jones Farm Tenant Act (50 Stat. 525), as amended, where such lands were subsequently transferred to the Department of the Interior, with the U.S. Fish and Wildlife Service as the custodial agency of the Government.

(1) *Leasing.* As to coordination lands, representatives of the Bureau of Land Management and the U.S. Fish and Wildlife Service will, in cooperation with the authorized members of the various State game commissions, confer for the purpose of determining by agreement those lands which shall not be subject to oil and gas leasing. Lands not closed to oil and gas leasing will be subject to leasing on the imposition of such stipulations agreed upon by the State Game Commission, the U.S. Fish and Wildlife Service, and the Bureau of Land Management.

§ 3101.4 Special leasing acts (areas).

§ 3101.4-1 Rights-of-way.

Lands in and under railroad and other rights-of-way acquired under any law of the United States.

(a) *Acreage limitations.* No statutory or regulatory limitations.

§ 3101.4-2 Nevada.

All of Township 15 South, Ranges 66, 67, 68, East, M. D. M.

All of Township 16 South, Ranges 66, 67, 68, East, M.D.M.

All of Township 17 South, Ranges 66, 67, 68, East, M.D.M.

and also a tract described as follows:

That area of unsurveyed land east of Timber Mountain bounded on the north by latitude 37°10′20″, on the south by latitude 37°7′46″, and lying between meridians of longitude 116°20′46″, and 116°23′28″ comprising an area of 9 square miles and including what is known as Fortymile Canyon Pueblo.

(a) *Acreage limitations.* See § 3101.1-5.

§ 3101.4-3 Lands patented to the State of California.

The regulations in this subpart apply to the lands patented to the State of California for park purposes.

(a) *Acreage limitations.* See § 3101.1-5.

§ 3101.4-4 National Forest lands in Minnesota.

Public domain lands, including lands received in exchange for public domain lands, or for timber on such lands pursuant to Part 2240 of this chapter, situated within the exterior boundaries of the national forests in Minnesota, which because of withdrawal, reservation, statutory limitation, or otherwise, are not subject to the general mining laws of the United States or to mineral leasing laws, and for the development and utilization of which no other authority exists.

(a) *Acreage limitations.* See § 3101.1-5.

§ 3101.4-5 Lake Mead Recreation Area.

The area subject to the regulations in this part is that area of land and water which is shown on a certain map identified as "boundary map, RA-LM-7060-B, revised July 17, 1963," which is on file and which is available for public inspection in the office of the Director of the National Park Service and in the headquarters office of the superintendent of the Lake Mead National Recreation Area. The area subject to these regulations may be revised by the Secretary as authorized in the act.

(a) *Acreage limitations.* See § 3101.1-5.

§ 3101.4-6 National Forest Wilderness.

As used in this subpart, the term "National Forest Wilderness" means an area or part of an area of National Forest land designated by the Wilderness Act as a wilderness area within the National Wilderness Preservation System.

(a) *Acreage limitations.* See § 3101.1-5.

§ 3101.4-7 Whiskeytown-Shasta-Trinity National Recreation Area.

The area subject to the regulations in this subpart is that shown in drawing numbered BOR-WEST 1004, dated July 1963, entitled "Proposed Whiskeytown-Shasta-Trinity National Recreation Area," which is on file and available for public inspection in the office of the Director of the Bureau of Outdoor Recreation, Department of the Interior, Washington, D.C. 20240.

(a) *Acreage limitations.* See §§ 3101.1-5 and 3101.2-4.

Subpart 3102 —Qualifications of Lessees

SOURCE: 35 FR 9678, June 13, 1970, unless otherwise noted.

§ 3102.1 Who may hold interests.

(a) *General.* Leases may be acquired and held only by citizens of the United States; associations (including partnerships) of such citizens, corporations organized under the laws of the United States or of any State or territory, thereof, or municipalities.

(b) *Aliens.* Leases or interests therein may be acquired and held by aliens only through stock ownership, stock holding and stock control; and only if the laws, customs or regulations of their country do not deny similar or like privileges to citizens or corporations of the United States.

(c) *Minors.* Leases shall not be acquired or held by one considered a minor under the laws of the State in which the lands are located, but leases may be acquired and held by legal guardians or trustees of minors in their behalf.

[45 FR 35161, May 23, 1980]

§ 3102.2 Statements of qualifications

[45 FR 35161, May 23, 1980]

§ 3102.2-1 General requirements.

(a) *Signatures.* All statements required by the regulations in this subpart shall be holographically (manually) signed in ink. Rubber stamped or mechanically affixed signatures are not acceptable.

(b) *Certifications.* All statements required by the regulations in this subpart are subject to the provisions of § 1821.3 of this title.

(c) *Filing statements for reference.* A statement of the qualifications of a trust or guardianship (§ 3102.2-3), association (§ 3102.2-4), corporation (§ 3102.2-5), agent, if the duration of the authority to act is less than 2 years and is specifically set out (§ 3102.2-6) or municipality (§ 3102.2-9) may be placed on file with a Bureau of Land Management office described in § 1821.2-1 of this title. The office receiving the statement shall indicate its acceptance of the qualifications by assigning a serial number to the statement. Reference to this serial number may be made to any Bureau of Land Management office in lieu of resubmitting the statement. Such a reference shall constitute certification that the statement complies with paragraph (b) of this section. Amendments to a statement of qualifications shall be filed promptly and the serial number shall not be used if the statement on file is not current.

[45 FR 35161, May 23, 1980]

§ 3102.2-2 All applicants and offerors.

The applicant, offeror, or agent as provided in § 3102.2-6 of this title, shall certify as to age, citizenship and compliance with the acreage limitations set forth in § 3101.1-5 and 3101.2-4 of this title on the lease offer, or on the lease application if leasing is in accordance with Subpart 3112 of this title.

[45 FR 35161, May 23, 1980]

§ 3102.2-3 Trustees and guardians.

If the offeror or applicant is a guardian or trustee filing on behalf of a ward or beneficiary, the offer, or application if leasing is pursuant to Subpart 3112 of this title, shall be accompanied by a certified copy of the court order, or other document, establishing the relationship and authorizing the guardian or trustee to fulfill all obligations of the lease or arising thereunder. A statement as to the age, citizenship and as to compliance with the acreage limitations set forth in §§ 3101.1-5 and 3101.2-4 of this title by the guardian or trustee and by each ward or beneficiary shall be signed by the guardian or trustee and shall accompany each offer or application if leasing is pursuant to Subpart 3112 of this title. The trustee of a revocable trust shall also submit a statement identifying the grantor of the trust and persons with the power of revocation.

[45 FR 35162, May 23, 1980]

§ 3102.2-4 Associations including partnerships.

(a) An association which seeks to lease shall submit with its offer, or application if leasing is in accordance with Subpart 3112 of this title:

(1) A certified copy of its articles of association or partnership;

(2) A statement that it is authorized to hold oil and gas leases; and

(3) A complete list of all general partners or members together with a statement as to their citizenship and identifying those authorized to act on behalf of the association or partnership in matters relating to Federal oil and gas leasing.

(b) A separate statement from each person owning or controlling more than 10 percent of the association, setting forth citizenship and compliance with the acreage limitations of §§ 3101.1-5 and 3101.2-4 of this title, shall be filed with the proper Bureau of Land Management office not later than 15 days after the filing of the offer, or application if leasing is in accordance with Subpart 3112 of this title.

[45 FR 35162, May 23, 1980]

§ 3102.2-5 Corporations.

(a) A corporation which seeks to lease shall submit with its offer, or application if leasing is in accordance with Subpart 3112 of this title, a statement showing:

(1) The State in which it is incorporated;

(2) That it is authorized to hold oil and gas leases;

(3) A complete list of corporate officers, identifying those authorized to act on behalf of the corporation in matters relating to Federal oil and gas leasing;

(4) The percentage of voting stock and of all the stock owned by aliens; and

(5) The names and addresses of the stockholders holding more than 10 percent of the stock of the corporation.

(b) A separate statement from each stockholder owning or controlling more than 10 percent of the stock of the corporation setting forth the stockholder's citizenship, percentage of corporate stock owned or controlled and compliance with the acreage limitations of §§ 3101.1-5 and 3101.2-4 of this title shall also be filed with the proper Bureau of Land Management office not later than 15 days after the filing of an offer, or application if leasing is in accordance with Subpart 3112 of this title.

[45 FR 35162, May 23, 1980]

§ 3102.2-6 Agents.

(a) Any applicant receiving the assistance of any other person or entity which is in the business of providing assistance to participants in a Federal oil and gas leasing program shall submit with the lease offer, or the lease application if leasing is in accordance with Subpart 3112 of this title, a personally signed statement as to any understanding, or a personally signed copy of any written agreement or contract under which any service related to Federal oil and gas leasing or leases is authorized to be performed on behalf of such applicant. Such agreement or understanding might include, but is not limited to: A power of attorney; a service agreement setting forth duties and obligations; or a brokerage agreement.

(b) Where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section. A list setting forth the name and address of each such offeror or applicant participating under the agreement shall be filed with the proper Bureau of Land Management office not later than 15 days from each filing of offers, or applications if leasing is in accordance with Subpart 3112 of this title.

[45 FR 35162, May 23, 1980]

§ 3102.2-7 Sole party in interest.

(a) The applicant shall set forth on the lease offer, or lease application if leasing is in accordance with Subpart 3112 of this title, or on a separate accompanying sheet, the names of all other parties who own or hold any interest in the application, offer or lease, if issued.

(b) A statement, signed by both the offeror or applicant and the other parties in interest, setting forth the nature of any oral understanding between them, and a copy of any written agreement shall be filed with the proper Bureau of Land Management office not later than 15 days after the filing of the offer, or application if leasing is in accordance with Subpart 3112 of this title. Such statement or agreement shall be accompanied by statements, signed by the other parties in interest, setting forth their citizenship and their compliance with the acreage limitations of §§ 3101.1-5 and 3101.2-4 of this title.

[45 FR 35162, May 23, 1980]

§ 3102.2-8 Heirs and devisees (estates).

If an offeror or applicant dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed, and if probate has been completed, or is not required, to the heirs or devisees, provided there is filed in all cases an offer to lease in compliance with the requirements of this section which will be effective as of the effective date of the original application or lease offer filed by the deceased. If there are any minor heirs or devisees, such offer can only be made by their legal guardian or trustee in his name. Each such offer must be accompanied by the following information:

(a) Where probate of the estate has not been completed:

(1) Evidence that the person who as executor or administrator submits the offer, and bond form if a bond is required, has authority to act in that capacity and to sign the offer and bond forms.

(2) A statement over the signature of each heir or devisee, similar to that required of an offeror or applicant concerning citizenship and holdings.

(3) Evidence that the heirs or devisees are the heirs or devisees of the deceased offeror or applicant and are the only heirs or devisees of the deceased.

(b) Where the executor or administrator has been discharged or no probate proceedings are required:

(1) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the offeror or applicant and the provisions of the law of the deceased's last domicile showing that no probate is required.

(2) A statement over the signature of each of the heirs or devisees with reference to holdings and citizenship, similar to that required of an offeror or applicant except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

[35 FR 9678, June 13, 1970, as amended at 45 FR 35162, May 23, 1980]

§ 3102.2-9 Municipalities.

A municipality must submit evidence of:

(a) The manner in which it is organized;

(b) That it is authorized to hold a permit or lease; and

(c) That the action proposed has been duly authorized by its governing body.

[35 FR 9678, June 13, 1970, as amended at 45 FR 35162, May 23, 1980]

§ 3102.3 Other showings of qualifications.

The applicant, offeror or agent may be required to submit additional information to the Bureau of Land Management to show compliance with the regulations of this part and the Act.

[45 FR 35162, May 23, 1980]

§ 3102.3-1 Statements.

(a) If the offeror is an association which meets the requirements of § 3102.1-1 of this chapter, the offer shall be accompanied by a certified copy of its articles of association or partnership, together with a statement showing (1) that it is authorized to hold oil and gas leases; (2) that the member or partner executing the lease is authorized to act on behalf of the association in such matters; and (3) the names and addresses of all members owning or controlling more than 10 percent of the association. A separate statement from each person owning or controlling more than 10 percent of the association, setting forth his citizenship and holdings, shall also be furnished. Where such material has previously been filed, a reference by serial number to the record in which it has been filed, together with a statement as to any amendments, will be accepted.

(b) *Exception.* If the offer is made by an association which does not meet the requirements of § 3102.1-1 of this chapter, the same showing as to citizenship and holdings of its members shall be made as is required of an individual.

Subpart 3103—Fees, Rentals, and Royalty

SOURCE: 35 FR 9680, June 13, 1970, unless otherwise noted.

NOTE: Nomenclature changes appear at 38 FR 10009, Apr. 23, 1973.

§ 3103.0-3 Authorities.

(a) *Fees.* Act of August 31, 1951 (5 U.S.C. 140).

(b) *Rentals.* See § 3100.0-3.

§ 3103.1 Payments.

§ 3103.1-1 Form of remittance.

All remittances shall be by cash, money order, check, certified check, bank draft or bank cashier's check, except as provided in § 3112.2-2 of this title.

[45 FR 35162, May 23, 1980]

§ 3103.1-2 Where submitted.

(a) *Proper office.* Unless otherwise directed by the Secretary, rentals and royalties under all leases and permits issued under the Act shall be paid to the Authorizing officer of the proper office. All remittances to Bureau of Land Management offices shall be made payable to the Bureau of Land Management.

(b) *Geological Survey.* (1) All rentals and royalties on producing oil and gas leases, communitized leases in producing well units, utilized leases in producing unit areas, leases on which compensatory royalty is payable, and all payments under subsurface storage agreements and easements for directional drilling are to be paid to the Area Oil and Gas Supervisor of the U.S. Geological Survey.

(2) Rentals and royalties on producing mining leases are to be paid to the Area Mining Supervisor. All remittances to Survey offices shall be made payable to the U.S. Geological Survey.

§ 3103.1-3 When submitted.

Each offer, when first filed, shall be accompanied by a filing fee of $25 which will be retained as a service charge, even though the offer should be rejected or withdrawn in whole or in part. See also §§ 3103.3-1 and 3103.3-2.

[35 FR 9680, June 13, 1970, as amended at 46 FR 45887, Sept. 15, 1981]

§ 3103.2 Fees.

§ 3103.2-1 General statement.

(a) *Offers and applications.* Each lease offer under Subpart 3111 of this title and each filing for a parcel under subpart 3112 of this title shall be accompanied by a filing fee of $25. Each fee shall be retained as a service charge even though the application or offer should be rejected or withdrawn in whole or in part.

(b) *Transfers.* An application for approval of any instrument of transfer of a lease or interest therein or a filing of any such instrument under § 3106.4 must be accompanied by a fee of $25, except that applications for transfer of a royalty interest must be accompanied by a fee of $10, and an application not accompanied by payment of such a fee will not be accepted for filing by the authorizing officer. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

[42 FR 1032, Jan. 5, 1977 and 45 FR 35162, May 23, 1980, as amended at 46 FR 45887, Sept. 15, 1981]

§ 3103.3 Rentals and royalties.

§ 3103.3-1 Rental requirements.

Each offer, when first filed, shall be accompanied by full payment of the first year's rental based on the total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision. An offer deficient in the first year's rental by not more than 10 percent will be approved by the signing officer provided all other requirements are met. The additional rental must be paid within 30 days from notice under penalty of cancellation of the lease.

§ 3103.3-2 Advance rental payments.

Rentals shall be payable in advance at the following rates:

(a) On noncompetitive leases issued on and after February 1, 1977, under section 17 of the Act for lands which on the day on which the rental falls due lie wholly outside of the known geologic structure of a producing oil or gas field, or on which on the day on which the rental falls due the thirty days' notice period under paragraph (b)(1) of this section has not yet expired, an annual rental of $1 per acre or fraction thereof for each lease year.

(1) For the sixth and each succeeding year of a lease which issued prior to September 2, 1960, and in the State of Alaska of any lease whose initial term expired on or after July 3, 1958, rental shall be payable at the rate of 50 cents per acre or fraction thereof.

(2) For each year of the primary term of a lease which issued prior to September 2, 1960, rental shall be payable at the rate set forth in the lease.

(b) On leases wholly or partly within the known geologic structure of a producing oil gas field:

(1) If issued noncompetitively under section 17 of the Act, and not committed to a cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, beginning with the first lease year after the expiration of thirty days' notice to the lessee that all or part of the land is included in such a structure and for each year thereafter prior to a discovery of oil or gas on the leased lands, rental of $2 per acre or fraction thereof.

(2) If issued noncompetitively under section 17 of the Act, and committed to an approved cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of pro-

duction, the rental prescribed for the respective lease years in paragraph (a) of this section shall apply to the acreage not within a participating area.

(3) If issued competitively, unless a different rate of rental is prescribed in the lease, an annual rental of $2 per acre or fraction thereof prior to a discovery on the leased lands. After a discovery, if the lease is utilized, such rental shall be payable on the nonparticipating acreage only, and royalty as provided in the lease and elsewhere in this part shall be payable on the participating acreage.

(c) On leases issued in any other way, an annual rental of $1 per acre or fraction thereof.

(d) A lease subject to the provisions of section 31 of the Act, as amended by section 1(7) of the Act of July 29, 1954 (30 U.S.C. 188) on which there is no well capable of producing oil or gas in paying quantities, shall automatically terminate by operation of law if the lessee fails to pay the full rental due on or before the anniversary date of the lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The "anniversary date" of a lease means the same day and month in succeeding years as that on which the lease first became effective. The anniversary date of a lease does not change.

(e) If on the anniversary date of the lease less than a full year remains in the lease term, the rentals due shall be in the same proportion to the annual rental as the period remaining in the lease term is to a full year. The rentals shall be prorated on a monthly basis for the full months, and on a daily basis for the fractional months remaining in the lease term. For the purpose of prorating rentals for a fractional month, each month will be deemed to consist of 30 days.

(1) If the term of a lease for which prorated rentals have been paid is further extended to or beyond the next anniversary date of the lease, rentals for the balance of the lease year shall be due and payable on the date following the date through which the prorated rentals were paid. If the rentals are not paid for the balance of the lease year, the lease will be subject to cancellation by the Secretary after he has given notice to the lessee in accordance with section 31 of the Act. However, if the anniversary date occurs before the end of the notice period, the rental for the ensuing lease year shall nevertheless be due on the anniversary date, and failure to pay the full rental for that year on or before that date shall cause the lease to terminate automatically by operation of law, without relieving the lessee of liability for rental due for the balance of the previous lease year. (30 U.S.C. 189; 41 Stat. 437.) If the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely.

[35 FR 9680, June 13, 1970, as amended at 42 FR 1033, Jan. 5, 1977]

§ 3103.3-3 Fractional interests.

Rentals, minimum royalties and royalties payable for lands in which the United States owns an undivided fractional interest shall be payable as provided in Subpart 3130 of this chapter.

[41 FR 43149, Sept. 30, 1976]

§ 3103.3-4 Royalty on production.

(a) On and after August 8, 1946, the following royalty rates shall be paid on the production removed or sold from leases:

(1) 12½ percent royalty on noncompetitive leases issued under section 17 of the Act: *Provided, however,* That any holder of a lease for lands in Alaska which issued and was outstanding prior to May 3, 1958, who shall drill and make the first discovery of oil or gas in commercial quantities in any geologic structure shall pay a royalty on all production under the lease of 5 percent for 10 years following the date of such discovery and thereafter the royalty rate shall be 12½ percent. If such lease is committed to an approved unit or cooperative plan under which such a discovery is made, the 5 percent rate herein provided shall, for the purpose of computing royalty due the United States inure to the benefit

of all the land to which an allocation is made under such plan.

(2) Such rates as are prescribed in the notice of sale in the case of all leases thereafter issued by competitive bidding.

(3) 12½ percent on all leases theretofore issued, except competitive leases, and on exchange and renewal leases thereafter issued, as to production from:

(i) Land determined by the Director, Geological Survey, not to be within the productive limits of any oil or gas deposit on August 8, 1946.

(ii) An oil or gas deposit which was discovered after May 27, 1941, by a well or wells drilled within the boundaries of the lease and which is determined by the Director, Geological Survey, to be a new deposit.

(iii) Or allocated to a lease pursuant to an approved unit or cooperative agreement from an oil or gas deposit which was discovered on unitized land after May 27, 1941, and determined by the Director, Geological Survey, to be a new deposit, but only if at the time of discovery the lease or, in the case of an exchange lease, the lease for which it was exchanged was committed to the agreement or was included in a duly executed and filed application for approval of the agreement.

(4) From lands within exchange and renewal leases not subject to paragraph (a)(3) of this section the rate of royalty shall be identical to that prescribed in the prior lease, except that for a lease issued in exchange for or as a renewal of a lease carrying a flat royalty rate of 5 percent to the United States the royalty shall be as follows:

(i) When the average production of oil for the calendar month in barrels per well per day is:

Not over 110 the royalty shall be 12½%.

Over 110 but not over 130 the royalty shall be 18% of all production.

Over 130 but not over 150 the royalty shall be 19% of all production.

Over 150 but not over 200 the royalty shall be 20% of all production.

Over 200 but not over 250 the royalty shall be 21% of all production.

Over 250 but not over 300 the royalty shall be 22% of all production.

Over 300 but not over 350 the royalty shall be 23% of all production.

Over 350 but not over 400 the royalty shall be 24% of all production.

Over 400 the royalty shall be 25% of all production.

(ii) On gas, including inflammable gas, helium, carbon dioxide, and all other natural gases and mixtures thereof, and on natural or casinghead gasoline and other liquid products obtained from gas; when the average production of gas per well per day for the calendar month does not exceed 5,000,000 cubic feet, 12½ percent; and when the production of gas exceeds 5,000,000 cubic feet, 16⅔ percent of the amount or value of the gas and liquid products produced.

(5) In the case of competitive leases, and other leases theretofore issued, insofar as paragraphs (a) (3) and (4) of this section are inapplicable, the rates specified in the lease.

(b) The average production per well per day for oil and for gas shall be determined pursuant to 30 CFR Part 221, "Oil and Gas Operating Regulations."

(c) In determining the amount or value of gas and liquid products produced, the amount or value shall be net after an allowance for the cost of manufacture. The allowance for cost of manufacture may exceed two-thirds of the amount or value of any product only on approval by the Secretary of the Interior.

(d) The Secretary of the Interior may establish reasonable values for purposes of computing royalty on any or all oil, gas, natural gasoline, and other liquid products obtained from gas, due consideration being given to the highest price paid for a part or for a majority of production of like quality in the same field, to the price received by the lessee, to posted prices and to other relevant matters. In appropriate cases this will be done after notice to the parties and opportunity to be heard.

§ 3103.3-5 Minimum royalties.

On leases issued on or after August 8, 1946, and on those issued prior thereto if the lessee files an election under section 15 of the Act of August 8, 1946, a minimum royalty of $1 per acre in lieu of rental, shall be payable at the expiration of each lease year after a discovery has been made on the leased lands, commencing with the lease year, beginning on or after the date of such discovery except that on unitized leases the minimum royalty shall be payable only on the participating acreage. If the actual royalty paid during any year aggregates less than $1 per acre the lessee must pay the difference at the expiration of the lease year.

§ 3103.3-6 Limitation of overriding royalties.

An agreement creating overriding royalties or payments out of the production of oil which, when added to overriding royalties or payments out of production of oil previously created and to the royalty payable to the United States, aggregate in excess of 17½ percent shall be deemed a violation of the terms of the lease unless such agreement expressly provides that the obligation to pay such excess overriding royalty or payments out of production of oil shall be suspended when the average production of oil per well per day averaged on the monthly basis is 15 barrels or less. The limitation on overriding royalties or payments out of production is not applicable to the production of gas. The limitation in this section will apply separately to any zone or portion of a lease segregated for computing Government royalty.

§ 3103.3-7 Waiver, suspension or reduction of rental or minimum royalty.

(a) In order to encourage the greatest ultimate recovery of oil or gas and in the interest of conservation, the Secretary of the Interior whenever he determines it necessary to promote development or finds that the leases cannot be successfully operated under the terms provided therein may waive, suspend, or reduce the rental or minimum royalty or reduce the royalty on an entire leasehold, or on any deposit, tract, or portion thereof segregated for royalty purposes.

(b) An application for any of the above benefits shall be filed in triplicate in the office of the Oil and Gas Supervisor for oil and gas leases. It must contain the serial number of the leases, the proper office name, the name of the record title holder and operator or sublessee and the description of the lands by legal subdivision.

(1) Each application involving oil or gas shall show the number, location, and status of each well that has been drilled, a tabulated statement for each month covering a period of not less than six months prior to the date of filing the application of the aggregate amount of oil or gas subject to royalty computed in accordance with the oil and gas operating regulations, the number of wells counted as producing each month, and the average production per well per day.

(c) Every application must contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of any leased products, and all facts tending to show whether the wells can be successfully operated upon the royalty or rental fixed in the lease. Where the application is for a reduction in royalty full information shall be furnished as to whether royalties or payments out of production are paid to others than the United States, the amounts so paid and efforts made to reduce them. The applicant must also file agreements of the holders to a permanent reduction of all other royalties from the leasehold to an aggregate not in excess of one-half the Government royalties.

§ 3103.3-8 Suspension of operations and production.

(a) Applications by lessees for relief from the producing requirements or from all operating and producing requirements of oil and gas leases shall be filed in triplicate in the office of the Area Oil and Gas Supervisors. The Area Oil and Gas Supervisors are authorized to act on applications for suspension of operations or production or both filed pursuant to this section and to terminate suspensions of this kind which have been or may be granted. However, no suspension of operations and production will be granted for any oil and gas lease in the absence of a well capable of production on the leasehold, except where the Director, Geological Survey, directs or assents to a suspension in the interest of conservation. Complete information must be furnished showing the necessity of such relief.

(b) The term of any lease will be extended by adding thereto any period of suspension of all operations and production during such term pursuant to the direction or assent of the Area Oil and Gas Supervisor or the Director, Geological Survey.

(c) A suspension shall take effect on the date specified in the direction or assent of the Area Oil and Gas Supervisor or the Director, Geological Survey. Rental and minimum royalty payments will be suspended during any period of suspension of all operations and production directed or assented to by the Area Oil and Gas Supervisor or the Director, Geological Survey, beginning with the first day of the lease month on which the suspension of operations and production becomes effective. If the suspension of operations and production becomes effective on any date other than the first day of a lease month, then rental and minimum royalty payments will be suspended beginning with the first day of the lease month next following such effective date. The suspension of rental and minimum royalty payments shall end on the first day of the lease month in which operations or production is resumed. Where rentals are creditable against royalties and have been paid in advance, proper credit will be allowed on the next rental or royalty due under the lease.

(d) No lease shall be deemed to expire by reason of a suspension of either operations or production only, pursuant to any directions or assent of the Area Oil and Gas Supervisor or the Director, Geological Survey.

(e) If there is a well capable of producing on the leased premises and all operations and production are suspended pursuant to any direction or assent of the Area Oil and Gas Supervisor or the Director, Geological Survey, the commencement of drilling operations only will be regarded as terminating the suspension as to operations but not as to production, and as terminating the period of suspension to be added to the term of the lease as provided in paragraph (b) of this section and the period of suspension of rental and minimum royalty payments as provided in paragraph (c) of this section. However, as provided in paragraph (d) of this section, the term of the lease will not be deemed to expire so long as the suspension of operations or production remains in effect.

(f) The relief authorized under this section may also be obtained for any oil and gas leases included within an approved unit or cooperative plan of development and operation.

(42 U.S.C. 4332(2)(C))

[45 FR 18375, Mar. 21, 1980]

Subpart 3104—Bonds

AUTHORITY: Mineral Leasing Act of February 25, 1920 (41 Stat. 437), as amended and supplemented (30 U.S.C. 181-287) and the Mineral Leasing Act for Acquired Lands of August 7, 1947 (30 U.S.C. 351-357).

§ 3104.0-5 Definitions.

For the purpose of this subpart: (a) "Operator" means the person authorized under the operating agreement approved by the Department to conduct operations on the leased land as specified in such agreement.

(b) "Unit Operator" means the person authorized under the unit agreement approved by the Department to conduct operations on unitized lands as specified in such agreement.

[41 FR 45566, Oct. 15, 1976]

§ 3104.1 Types of bonds.

Bonds under this subpart must be either surety bonds or personal bonds.

(a) *Surety bond.* Surety bonds must be issued by qualified surety companies approved by the Treasury Department (see Department of the Treasury Circular 570, as revised periodically in the FEDERAL REGISTER).

(b) *Personal bond.* Personal bonds must be accompanied by a deposit as security therefor of negotiable Treasury bonds of the United States or cash of a value equal to the amount specified in the bond. Negotiable Treasury bonds must be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of the lease.

[41 FR 45566, Oct. 15, 1976]

§ 3104.2 Types of coverage.

(a) *General lease and drilling bond.* A general lease and drilling bond in the amount of not less than $10,000, conditioned upon compliance with all the terms and conditions of the lease must be furnished prior to entry and commencement of geophysical exploration or drilling operations by the lessee or his operator.

(b) *Operator's bond.* An operator's bond in the amount of not less than $10,000, conditioned upon compliance with all the terms and conditions of the lease, may be furnished in lieu of a general lease and drilling bond. Where there are two or more operators having interests in different formations or portions of the lease, each operator may file an operator's bond in his own name as principal on the bond in lieu of the general lease and drilling bond. In any event, every operator shall be covered by either a general lease and drilling bond or an operator's bond.

(c) *Unit operator's bond.* The approved unit operator may furnish and maintain a unit operator's bond conditioned upon faithful performance of the duties and obligations of the agreement and the terms and conditions of every lease subject thereto in lieu of a separate general lease and drilling bond or operator's bond for each lease committed to the unit agreement. All unit operator's bonds must be furnished upon request and in at least the amount recommended by the Area Oil and Gas Supervisor. (See 30 CFR 226.15 for form of Unit Operator's bond.)

(d) *Bond for the protection of the surface owner.* Separate bonds for the protection of surface owners are no longer required. Adequate protection of surface owners is provided by bonds required from either the lessees, operators, or unit operators.

[41 FR 45566, Oct. 15, 1976]

§ 3104.3 Statewide and Nationwide bonds.

(a) *Statewide bond.* In lieu of general lease and drilling bonds and operator's bonds, holders of leases or approved operating agreements, may furnish a bond in the amount of at least $25,000 covering all leases and operations in any one State under either the Mineral Leasing Act of 1920 or the Mineral Leasing Act for Acquired Land of 1947. Operators functioning under both Acts will be required to furnish separate bonds.

(b) *Nationwide bond.* In lieu of general lease and drilling bonds, operator's bonds, or statewide bonds, holders of leases or approved operating agreements may furnish a bond in the amount of at least $150,000 covering all leases or operations nationwide under both the Mineral Leasing Act of 1920 and the Mineral Leasing Act for Acquired Lands of 1947.

[41 FR 45566, Oct. 15, 1976]

§ 3104.4 Increased amount of bonds.

The authorized officer, on his own motion or upon the recommendation of the Area Oil and Gas Supervisor, may elect to increase the amount of any bonds required under this Subpart 3104 when additional coverage is determined appropriate.

[41 FR 45566, Oct. 15, 1976]

§ 3104.5 Where filed and number of copies.

All bonds must be filed in the proper office (See Part 1820). A single copy executed by the principal and, in the case of surety bonds, by both the principal and an acceptable surety is sufficient.

[41 FR 45566, Oct. 15, 1976]

§ 3104.6 Form of bonds.

All bonds must be furnished on forms approved by the Director.

[41 FR 45566, Oct. 15, 1976]

§ 3104.7 Default.

(a) *Payment by surety.* Where, upon a default, the surety makes payment to the Government of any obligation incurred under a lease, the face amount of the surety bond or personal bond and the surety's liability thereunder shall be reduced by the amount of such payment.

(b) *Penalty.* After default, upon penalty of cancellation of all of the leases covered by such bond, that principal shall post a new bond in the amount previously held by the Government, within 6 months after notice, or within such shorter period as the authorized officer of athe Bureau of Land Management may fix. However, in lieu thereof, the principal may within that time file separate or substitute bonds for each lease or operating agreement. Where a bond is furnished by an operator or unit operator, suit may be brought thereon without joining the lessee when not a party to the bond.

[41 FR 45566, Oct. 15, 1976]

§ 3104.8 Termination of period of liability.

The authorized officer will not give consent to termination of the period of liability of any bond unless an acceptable alternative bond has been filed or until all the terms and conditions of the lease have been met.

[41 FR 45566, Oct. 15, 1976]

§ 3104.9 Exploration bond.

(a) *Individual.* Simultaneously with the filing of the Notice of Intent to Conduct Oil and Gas Exploration Operations, and before entry is made on the land, the party or parties filing the "Notice of Intent to Conduct Oil and Gas Exploration Operations" must file with the District Manager a surety company bond in the amount of $5,000, conditioned upon the full and faithful compliance, for each oil and gas exploration operation, with all of the terms and conditions of the regulations in this subpart and of that notice.

(b) *Nationwide.* A $50,000 nationwide bond.

(c) *Statewide.* A statewide bond in the amount of $25,000 covering all oil and gas exploration operations in the same State.

[35 FR 9682, June 13, 1970]

§ 3104.9-4 Riders to existing bond forms.

(a) *Nationwide and statewide bonds.* Holders of nationwide and statewide oil and gas lease bonds shall be permitted to amend their bonds to include exploration activities in lieu of furnishing additional bonds.

[35 FR 9682, June 13, 1970]

§ 3104.9-5 Termination of period of liability.

The District Manager will not give his consent to the cancellation of the bond if an individual bond was submitted, or to the termination of liability if a State or nationwide bond was submitted, unless and until all of the terms and conditions of the "Notice of Intent to Conduct Oil and Gas Exploration Operations" have been complied with. Should the District Manager or any other authorized officer of the Bureau of Land Management fail to notify the party within 90 days from the filing of "Notice of Completion" that all terms and conditions have been complied with or that additional corrective measures must be taken to rehabilitate the land, liability under an individual bond or liability for a particular oil and gas exploration operation under a state or nationwide bond shall automatically terminate on the 91st day.

[35 FR 9682, June 13, 1970]

Subpart 3105—Cooperative Conservation Provisions

SOURCE: 35 FR 9684, June 13, 1970, unless otherwise noted.

§ 3105.0-7 Cross references.

The procedure in obtaining approval of a cooperative or unit plan of development including suggested text of an agreement acceptable to the Department is contained in 30 CFR Part 226 "Unit or Cooperative Agreements".

§ 3105.1 Cooperative or unit plans.

§ 3105.1-1 Where filed.

All applications to utilize and all documents incident thereto shall be filed in the office of the Oil and Gas Supervisor, Geological Survey in the region in which the unit area is situated.

§ 3105.1-2 Purpose.

The agreement must be for the purpose of more properly conserving the natural resources of any such oil or gas pool, field, or area covered thereby and must be determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest.

§ 3105.1-3 Protection of public interest.

The Secretary, with the consent of the lessees, is authorized to establish, alter, change, or revoke drilling, producing, rental, minimum royalty, and royalty requirements of the leases and to make such regulations with reference to such leases as he may deem necessary or proper to secure the protection of the public interest.

§ 3105.1-4 Acreage chargeability.

All leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior shall be excepted in determining acreage charges. For the extension of leases committed to a unit plan, see § 3107.4.

§ 3105.1-5 Requirements.

The Act authorizes lessees and their representatives to unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of any oil or gas pool, field, or like area, or any part thereof (whether or not any part of such pool, field, or like area is then subject to any cooperative or unit plan of development or operation).

§ 3105.2 Communitization or drilling agreements.

§ 3105.2-1 Where filed.

(a) *Preliminary request.* Preliminary requests to communitize separate tracts shall be filed in triplicate with the Oil and Gas Supervisor.

(b) *Executed agreements.* Executed agreements shall be submitted in sufficient number to permit retention of five copies by the Department after approval.

§ 3105.2-2 Purpose.

The Secretary is authorized when separate tracts under lease cannot be independently developed and operated in conformity with an established well-spacing or well-development program, to approve communitization or drilling agreements for the lease or any portion thereof with other lands, whether or not owned by the United States, when in the public interest. Operations or production pursuant to such an agreement shall be deemed to be operations or production as to each lease committed thereto.

§ 3105.2-3 Requirements.

The agreement shall describe the separate tracts comprising the drilling or spacing unit, shall show the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of all parties, including the United States. The agreement must be signed by or in behalf of all necessary parties and will be effective only after approval by the Secretary of the Interior as provided therein.

§ 3105.3 Operating, drilling, or development contracts.

§ 3105.3-1 Where filed.

A contract submitted for approval under this provision should be filed with the authorized officer of the proper office, Bureau of Land Management, together with enough copies to permit retention of five copies by the Department after approval.

§ 3105.3-2 Purpose.

The authority of the Secretary to approve operating, drilling, or development contracts without regard to acreage limitations ordinarily will be exercised only to permit operators or pipeline companies to enter into contracts with a number of lessees sufficient to justify operations on a large scale for the discovery, development, production, or transportation of oil or gas and to finance the same.

§ 3105.3-3 Requirements.

The contract should be accompanied by a statement showing all the interests held by the contractor in the area or field and the proposed or agreed plan of operation or development of the field. All the contracts held by the same contractor in the area or field should be submitted for approval at the same time, and full disclosure of the project made. Complete details must be furnished in order that the Secretary may have facts upon which to make a definite determination in accordance with the provisions of the act, and prescribe the conditions on which approval of the contracts is made.

§ 3105.4 Combination for joint operations or for transportation of oil.

§ 3105.4-1 Where filed.

An application under this section together with enough copies to permit retention of five copies by the Department after approval should be filed with the Director, Bureau of Land Management.

§ 3105.4-2 Purpose.

Upon obtaining the approval of the Secretary, lessees may combine their interests in leases for the purpose of constructing and carrying on the business of a refinery, or of establishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly in the transportation of oil from their several wells or from the wells of other lessees, or to increase the acreage which may be acquired or held under the provisions of section 17 of the Act relating to competitive leases.

§ 3105.4-3 Requirements.

The application must show a reasonable need for the combination and that it will not result in any concentration of control over the production or sale of oil and gas which would be inconsistent with the anti-monopoly provisions of the law.

§ 3105.4-4 Rights-of-way.

Rights-of-way for oil and gas pipe lines may be granted as provided for in Group 2800 of this chapter.

§ 3105.5 Subsurface storage of oil and gas.

§ 3105.5-1 Where filed.

(a) *Application.* Applications for subsurface storage shall be filed in triplicate with the Oil and Gas Supervisor.

(b) *Final agreement.* Enough copies of the final agreement signed by the parties in interest shall be submitted for the approval of the Secretary to permit retention of five copies by the Department after approval.

§ 3105.5-2 Purpose.

In order to avoid waste or to promote conservation of natural resources, the Secretary of the Interior, upon application by the interested parties, may authorize the subsurface storage of oil or gas, whether or not produced from federally owned lands, in lands leased or subject to lease under the act. Such authorization will provide for the payment of such storage fee or rental on the stored oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced.

§ 3105.5-3 Requirements.

The final agreement shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental, or royalty offered to be paid for such storage and all essential information showing the necessity for such project.

§ 3105.5-4 Extension of lease term.

Any lease used for the storage of oil or gas shall be extended for the period of such storage and so long thereafter as oil or gas not previously produced is produced in paying quantities.

§ 3105.6 Consolidation of leases.

Consolidation of leases may be approved if it is determined that there is sufficient justification. Each application will be considered on its own merits. Ordinarily, leases to different lessees for different terms, rental, and royalty rates as well as those containing provisions of law which cannot be reconciled, will not be considered for consolidation. The effective date of the consolidated lease will be that of the oldest lease involved.

Subpart 3106—Assignment or Transfers and Subleases

SOURCE: 35 FR 9685, June 13, 1970, unless otherwise noted.

§ 3106.1 Qualifications.

§ 3106.1-1 Who may file.

Leases may be assigned or subleased as to all or part of the leased acreage and as to either a divided or undivided interest therein to any person or persons qualified to hold a lease.

(a) *Minors*—(1) *Exception.* A minor, except a minor heir or devisee of a lessee, is not qualified to hold a lease and an assignment to a minor will not be approved.

§ 3106.1-2 Failure to qualify.

No assignment will be approved if the assignee or sublessee or any other parties in interest are not qualified to take and hold a lease or if their bond is insufficient or if they fail to file the statement of interest required by § 3106.1-4.

§ 3106.1-3 Number of copies required.

A single copy of any additional information relating to citizenship and qualifications of corporations will be sufficient. Except for assignments of royalty interests all instruments of transfer of a lease or of an interest therein, including assignments of working interests, operating agreements, and subleases, must be filed for approval within 90 days from the date of final execution and, except for record title assignments, must contain all of the terms and conditions agreed upon by the parties thereto, together with similar evidence and statements as that required of an offeror under Subpart 3102.

§ 3106.1-4 Sole party in interest.

The assignment or sublease must be accompanied by a signed statement by the assignee or sublessee that he is the sole party in interest in the assignment or sublease; if not, he shall set forth the names of the other interested parties. If there are other parties interested in the assignment or sublease, a separate statement must be signed by them and by the assignee or sublessee setting forth the nature and extent of the interest of each, the nature of the agreement between them, if oral, and a copy of the agreement if written. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the assignment or sublease.

§ 3106.1-5 Attorney-in-fact.

Where an attorney-in-fact or agent, in behalf of the assignor or assignee, signs the instrument of transfer or the application for approval, evidence of the authority of the attorney-in-fact or agent to sign such assignment or application must be furnished. Where such evidence has previously been filed in the same land office where the assignment is filed, a reference to the serial number of the record in which it has been filed will be accepted. In those cases where the application for approval of an assignment is signed by an attorney-in-fact or agent there must also be submitted similar statements and evidence from the principal and the agent or attorney-in-fact to that required by § 3102.6.

§ 3106.1-6 Heirs and devisees.

In order for the heirs or devisees of a deceased holder of a lease, an operating agreement, or a royalty interest in a producing lease, to be recognized by the Department as the holder of the lease, agreement, or interest, there must be furnished the appropriate showing required under § 3102.8.

§ 3106.2 Requirements.

§ 3106.2-1 Where filed and filing fee.

An application for approval of any instrument of transfer of a lease of interest therein or a filing of any such instrument under § 3106.4 must be filed in the proper office and accompanied by a fee of $25, except that applications for transfer of a royalty interest must be accompanied by a fee of $10. An application not accompanied by payment of such a fee will not be accepted for filing by the authorizing officer. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

[42 FR 1033, Jan. 5, 1977]

§ 3106.2-2 Forms.

(a) *Record title; copies required.* An assignment of a record title interest shall be filed in triplicate in the proper Bureau of Land Management Office.

(1) *Official form.* A form approved by the Director shall be used. Three copies of the form, each of which has been prenumbered and designated by the Bureau of Land Management for use in assigning a record title interest in a particular lease, shall be furnished upon request. Each form shall be used to assign only the designated lease. No reproductions of the official form shall be accepted for filing. The signature of the authorized officer on the official form shall constitute approval of the assignment.

(2) *Separate instruments required.* Each of the three copies of the assignment form shall be signed holographically (manually) in ink and shall be filed for each lease or for each transfer of all or a part of the leased acreage or of a divided or an undivided interest in the record title in such lease. When transfers to the same person, association or corporation involving more than one lease are filed at the same time for approval, one showing as to qualifications of the assignee, if not previously furnished, shall suffice.

(3) *When forms may be obtained.* Forms for the assignment of leases issued under Subpart 3112 of this title will be available upon lease issuance or 60 days after priority of applications is established by drawing, whichever comes first. Forms for the assignment of leases issued under Subpart 3111 of this title will be available upon lease issuance or 60 days after the filing of an offer to lease, whichever occurs first. Forms for the assignment of competitive leases shall be available upon the designation of serial number to competitive bids by the Bureau of Land Management.

(4) *Where forms may be obtained.* The official form may be obtained only from the Bureau of Land Management office have jurisdiction over the lease to be assigned. The serial number of the particular lease to be assigned shall be identified in any request for a form.

(b) *Other than record title; copies required.* A single executed copy of all other instruments of transfer, or of an operating agreement is sufficient.

[35 FR 9685, June 13, 1970, as amended at 45 FR 30057, May 6, 1980]

§ 3106.2-3 Bonds.

(a) *Coverage.* If a bond is necessary, it must be furnished. Where an assignment does not create separate leases the assignee, if the assignment so provides, may become a joint principal on the bond with the assignor. Any assignment which does not convey the assignor's record title in all of the lands in the lease must also be accompanied by consent of his surety to remain bound under the bond of record for the lease interest retained by said assignor, if the bond, by its terms, does not contain such consent. If a party to the assignment has previously furnished a nationwide or statewide bond, no additional showing is necessary by such party as to the bond requirement.

(b) *Continuing responsibility.* The assignor or sublessor and his surety will continue to be responsible for the performance of any obligation under the lease until the assignment or sublease is approved. If the assignment or transfer is not approved, their obligations to the United States shall continue as though no such assignment or transfer had been filed for approval. After approval the assignee or sublessee and his surety will be responsible for the performance of all lease obligations notwithstanding any terms in the assignment or sublease to the contrary.

§ 3106.2-4 Royalty and production payments.

(a) *Royalty.* If any overriding royalty or payments out of production are created which are not shown in the instrument or agreement, a statement must be submitted describing them.

(b) *Production payments.* If payments out of production are reserved, a statement should be submitted stating the details as to the amount, method of payment, and other pertinent terms. A single copy of any additional information relating to citizenship and quaiifications of corporations, will be sufficient.

Unless the lease account is in good standing as to the area covered by the assignment when the assignment and bond are filed, or is placed in good standing before the assignment is reached for action the lease will be canceled as provided in Subpart 3108.

§ 3106.2-5 Lease account status.

Unless the lease account is in good standing as to the area covered by the assignment when the assignment and bond are filed, or is placed in good standing before the assignment is reached for action the lease will be canceled as provided in Subpart 3108.

§ 3106.2-6 Description of lands.

Each instrument of transfer must describe the lands involved in the same manner as described in the lease or in the manner required by § 3101.1-4.

(a) *Effect of assignment.* An assignment of a definitely described portion of the lands in a lease segregates the assigned and the retained portions into separate and distinct leases. An assignment of an undivided interest either in the entire leasehold or in any definitely described portion thereof shall not segregate or have the effect of segregating the lease into separate or distinct leases.

§ 3106.3 Approval.

§ 3106.3-1 Approval.

To obtain approval of a transfer affecting the record title of an oil and gas lease, a request for such approval must be made, within 90 days from the date of the execution of the assignment by the parties.

§ 3106.3-2 Separate zones.

An assignment of a separate zone or deposit or of a part of a legal subdivision will not be approved unless the necessity therefor is established by clear and convincing evidence.

§ 3106.3-3 Effective date.

Subject to final approval by the Bureau of Land Management, assignments or subleases shall take effect as of the first day of the lease month following the date of filing in the proper office of all the papers required by this subpart.

§ 3106.3-4 Transfer of offer.

A transfer of the whole interest in all or any part of the offer may be approved as an incident to the transfer, by assignment or otherwise, of the whole interest in all or any part of the lease. A transfer of an undivided fractional interest in the whole offer may be approved as an incident to the transfer of an undivided fractional interest in the whole lease. An application for approval of a transfer of an offer must include a statement that the transferee agrees to be bound by the offer to the extent that it is transferred and must be signed by the transferee. In other instances transfers of an offer will not be approved prior to the issuance of a lease for the lands or deposits covered by the said transfers.

§ 3106.4 Royalty interests.

Royalty interests in oil and gas leases constitute holdings or control of lands and deposits within the meaning of section 27 of the Act. In order that the holdings of the assignee may be verified, all assignments of royalty interests should be filed for record purposes within 90 days from the date of execution, but no formal approval will be given. Any such assignment will be deemed to be valid provided it is accompanied by a statement over the assignee's signature that he is a citizen of the United States and that his interests in oil and gas leases do not exceed the acreage limitation as provided in § 3101.1-5 and by the statement as to overriding royalties required by § 3106.2-4(a). If any portion of this statement is found to be false the assignment shall be invalid.

§ 3106.5 Extensions.

See § 3107.6.

Subpart 3107—Continuation, Extension or Renewals

SOURCE: 35 FR 9686, June 13, 1970, unless otherwise noted.

§ 3107.1 Single extensions.

§ 3107.1-1 Requirements.

(a) *Who may apply.* Under the conditions set out in the following paragraphs of this section, the record title holder of any noncompetitive lease maintained in accordance with the statutory requirements and the regulations in this part which issued prior to September 2, 1960, shall be entitled, to a single extension of the lease at the expiration of the initial five-year term unless then otherwise provided by law. An application for such extension may be filed by the record title holder of the lease, by an assignee whose assignment has been filed for approval, or by an operator whose operating agreement has been filed for approval.

(b) *Application.* The application for extension must be filed, within ninety days before the expiration date of the lease, on a form approved by the Director, "Application for Extension of Oil and Gas Lease", or unofficial copies of that form in current use and must be accompanied by a filing fee of $10 which will be retained as a service charge even though the application is later withdrawn or rejected and, unless previously paid, the sixth year's rental: *Provided,* That the unofficial copies are exact reproductions on one sheet of both sides of the official approved one-page form, and are without additions, omissions, or other changes or advertising. The official form or a valid reproduction of the official form, will also constitute approval of the extension when signed by an authorized officer.

§ 3107.1-2 Effect of withdrawal of lands.

Where, upon the expiration of the initial 5-year lease term, the leased lands or any part thereof, have been withdrawn from leasing, the lease will not be extended as to such lands, except that, a withdrawal shall not affect the right to an extension if drilling operations were actually commenced on the withdrawn lands prior to the effective date of the withdrawal and such operations were being diligently prosecuted on the expiration date of the lease, or if notice of the withdrawal has not been sent by registered mail to each lessee to be affected thereby, at least 90 days prior to the termination date of the lease.

§ 3107.1-3 Term of extension.

Upon compliance with, and in accordance with, the provisions of this section, the lease will be extended, subject to the rules and regulations in force at the expiration of the initial term, (a) as to the lands not within the known geologic structure of a producing oil or gas field, for a period of 5 years, and so long thereafter as oil or gas is produced in paying quantities, and (b) as to lands within the known geologic structure of a producing oil or gas field, for a period of 2 years and so long thereafter as oil or gas is produced in paying quantities.

§ 3107.1-4 Segregative effect of application.

The timely filing of an application for extension shall have the effect of segregating the leased lands until the final action taken on the application is noted on the tract book, or, for acquired lands, on the official records relating thereto, of the proper office. Prior to such notation, the lands are not available to the filing of offers to lease. Offers to lease filed prior to such notation will confer no rights in the offeror and will be rejected.

§ 3107.1-5 Rejection.

If during the 90-day period prior to the expiration date of the lease, the record title holder, assignee or operator files an application or request for an extension not on the prescribed form or unofficial copies thereof, or fails to file the prescribed number of copies, or pay the sixth year's rental, a notice will be issued allowing him 30 days to do so. The application will be rejected if such filing or payment is not made within the time allowed.

§ 3107.1-6 Expiration by operation of law.

Upon failure of the lessee or the other persons enumerated in paragraph (a) of this section to file an application for extension within the specified period, the lease will expire at the expiration of its primary term without notice to the lessee. Notation of such expiration need not be made on the official records, but the lands covered by such expired lease will be subject to the filing of new lease offers only as provided in Subpart 3112.

§ 3107.2 Continuation by drilling.

§ 3107.2-1 Terms defined.

(a) *Actual drilling operations.* As used in this section "actual drilling operations" shall include not only the physical drilling of a well but the testing, completing or equipping of such well for the production of oil or gas.

(b) *Primary term.* (1) "Primary term" or leases subject to section 4(d) of the Mineral Leasing Act Revision of 1960 (30 U.S.C. 226-1(d)) means all periods in the life of the lease prior to its extension by reason of production of oil and gas in paying quantities.

(2) "Primary term" of all other leases means the initial term as set forth in the lease. For a competitive lease issued under section 17 of the Mineral Leasing Act, as amended (30 U.S.C. 226(e)), this means five years and for a noncompetitive lease issued under that section this means ten years.

[35 FR 9686, June 13, 1970, as amended at 40 FR 12507, Mar. 19, 1975]

§ 3107.2-2 Diligent operations.

Actual drilling operations must be conducted in such a way as to be an effort which one seriously looking for oil or gas could be expected to make in that particular area, given existing knowledge of geologic and other pertinent facts.

§ 3107.2-3 Period of extension.

Any lease on which actual drilling operations, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time, shall be extended for 2 years and so long thereafter as oil or gas is produced in paying quantities.

§ 3107.3 Continuation of lease on termination of production.

§ 3107.3-1 Cessation of production.

A lease which is in its extended term because of production shall not terminate upon cessation of production if, within 60 days thereafter, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction.

§ 3107.3-2 Nonproduction from lease capable of production.

No lease for lands on which there is a well capable of producing oil or gas in paying quantities shall expire because the lessee fails to produce the same, unless the lessee fails to place the well on a producing status within 60 days after receipt of notice by registered mail from the Area Oil and Gas Supervisor to do so: *Provided,* That after such status is established production shall continue on the leased premises unless and until suspension of production is allowed by the Secretary of the Interior under the provisions of the Act.

§ 3107.4 Extension for terms of cooperative or unit plan.

§ 3107.4-1 20-year lease or any renewal thereof.

Any lease issued for a term of 20 years, or any renewal thereof, committed to a cooperative or unit plan approved by the Secretary of the Interior, or any portion of such lease so committed, shall continue in force so long as committed to the plan, beyond the expiration date of its primary term. This provision does not apply to that portion of any such lease which is not included in the cooperative or unit plan unless the lease was so committed prior to August 8, 1946.

§ 3107.4-2 Other leases committed to plan.

Any other lease issued under any section of the Act, committed to any such plan that contains a general provision for the allocation of oil or gas, shall continue in effect as to the land committed so long as the lease remains subject to the plan: *Provided*, That production of oil or gas is had in paying quantities under the plan prior to the expiration date of such lease, whether it be in its primary term or its extended term.

§ 3107.4-3 Segregation of leases committed in part.

Any lease committed after July 29, 1954 to such a plan, which covers lands within and lands outside the area covered by the plan, shall be segregated, as of the effective date of unitization, into separate leases; one covering the lands committed to the plan and the other the lands not so committed. The segregated lease covering the nonunitized portion of the lands, shall continue in force and effect for the term thereof but for not less than two years from the date of segregation, and so long thereafter as oil or gas is produced in paying quantities.

§ 3107.5 Extension by elimination.

Any lease eliminated from any approved or prescribed cooperative or unit plan or from any communitization or drilling agreement authorized by the Act, and any lease in effect at the termination of such plan or agreement, unless relinquished, shall continue in effect for the original term of the lease, or for 2 years after its elimination from the plan or agreement or the termination thereof, whichever is the longer, and so long thereafter as oil or gas is produced in paying quantities.

§ 3107.6 Extension of leases segregated by assignment.

§ 3107.6-1 Extension after discovery on other segregated portions.

Any lease segregated by assignment, including the retained portion, shall continue in effect for the primary term of the original lease, or for two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the original lease, whichever is the longer period.

§ 3107.6-2 Undeveloped parts of leases in their extended term.

Undeveloped parts of leases retained or assigned out of leases which are in their extended term under any provision of the act shall continue in effect for two years after the effective date of assignment and so long thereafter as oil or gas is produced in paying quantities, provided the parent lease was issued prior to September 2, 1960.

§ 3107.6-3 Undeveloped parts of producing leases.

Undeveloped parts of leases retained or assigned out of leases which are extended by production, actual or suspended, or the payment of compensatory royalty shall continue in effect for two years after the effective date of assignment and so long thereafter as oil or gas is produced in paying quantities.

§ 3107.7 Exchange leases.

§ 3107.7-1 20-year leases.

(a) *Requirements and terms.* Any lease which issued for a term of 20 years, or an renewal thereof, or which issued in exchange for a 20-year lease prior to August 8, 1946, may be exchanged for a new lease. Such new lease will be issued for a primary term of 5 years and so long thereafter as oil or gas is produced in paying quantities and will contain the rental and royalty rates prescribed in §§ 3103.3-2, 3103.3-4, and 3103.3-5. An application to exchange a lease for a new lease should be filed in triplicate by the lessee with the authorized officer of the proper office, must show full compliance by the applicant with the terms of the lease and applicable regulations, and must be accompanied by a nonrefundable filing fee of $10.

§ 3107.8 Renewal leases.

§ 3107.8-1 Requirements.

(a) Such application should be made by the record title holder or holders of the lease and may be joined in or consented to by the operator of record. The application should show whether all moneys due the United States have been paid and whether operations under the lease have been conducted in accordance with the regulations of the Department.

(b) The applicant or his operator shall furnish in triplicate with the application for renewal, copies of all agreements not theretofore filed providing for overriding royalties or other payments out of production from the lease which will be in existence as of the date of its expiration. When such payments, including overriding royalties, are in excess of 5 percent of gross production a detailed statement of the income from and costs of operation of the lease for the twelve month period immediately preceding the month in which the application for renewal is filed must also be furnished.

§ 3107.8-2 Terms.

Twenty-year leases or renewals thereof may be renewed for successive terms of 10 years at the rental and royalty rates specified for such renewal leases in §§ 3103.3-2, 3103.3-4 and 3103.3-5. An application to renew should be filed in triplicate, in the proper office as prescribed in § 3000.5 at least 90 days, out not more than 6 months, prior to the expiration of its term, and must be accompanied by a nonrefundable filing fee of $10.

§ 3107.8-3 Approval.

(a) *Acceptable application.* If the outstanding obligations in excess of 5 percent of gross production payable from production do not constitute a burden on the lease prejudicial to the interests of the United States, they will not be considered a bar to its renewal but any lease that may be issued will be upon the condition, to be incorporated in the lease, that if and when the cost of operations, including the payment of overriding royalties or payments out of production, shall be determined by the authorized officer of the Bureau of Land Management to constitute such a burden such royalties and payments shall be reduced to not more than 5 percent of the value of the production. If no objection to the renewal of the lease appears, copies of a renewal lease, in triplicate, dated the first day of the month in which the original lease terminated, will be forwarded to the lessee for execution. If upon receipt of the executed lease forms and a satisfactory lease bond, the lease is executed, one copy thereof will be delivered to the lessee.

(b) *Unacceptable application.* If a determination is made that overriding royalties and payments out of production in excess of 5 percent of gross production constitute a burden on lease operations to the extent that proper and timely development will be retarded, or continued operation of the lease impaired, or premature abandonment of the wells caused, the lease application will be suspended and the parties in interest will be offered an opportunity to reduce the excessive overriding royalties or other payments out of production to not more than 5 percent of the value of the production. If the holders of outstanding overriding royalty or other interests payable out of production, the operator, and the lessee are unable to enter into a mutually fair and equitable agreement, any of the parties may apply for a hearing at which all interested parties may be heard and written statements presented. Thereupon a final decision will be rendered by the Department outlining the conditions acceptable to it as a basis for a fair and reasonable adjustment of the excessive overriding royalties and other payments out of production, and an opportunity will be afforded within a fixed period of time to submit proof that such adjustment has been affected. Upon failure to submit such proof within the time so fixed, the application for renewal will be denied.

§ 3107.8-4 Form of lease.

Renewal and exchange leases will be issued on a form approved by the Director. The rentals and royalties payable thereunder will be set out on such schedule as may be appropriate.

§ 3107.9 Other types.

§ 3107.9-1 Payment of compensatory royalty.

The payment of compensatory royalty shall extend the primary or extended term of any lease for the period during which such compensatory royalty is paid, and for a period of 1 year from the discontinuance of such payments, and for so long thereafter as oil or gas is produced in paying quantities.

§ 3107.9-2 Proceedings under Multiple Mineral Development Act of August 13, 1954.

See § 3101.1-6.

Subpart 3108—Relinquishment, Termination, Cancellation

SOURCE: 35 FR 9688, June 13, 1970, unless otherwise noted.

§ 3108.1 Relinquishments.

A lease or any legal subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in triplicate, in the proper office. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and his surety to make payments of all accrued rentals and royalties and to place all wells on the land to be relinquished in condition for suspension or abandonment in accordance with the regulations and the terms of the lease. A statement must be furnished that all moneys due and payable to workmen employed on the leased premises have been paid.

§ 3108.2 Operation of law.

§ 3108.2-1 Automatic terminations and reinstatement.

(a) *Automatic terminations.* Except as provided in paragraph (b) of this section, any lease subject to the provisions of section 31 of the Act, as amended by section 1(7) of the Act of July 29, 1954 (30 U.S.C. 188) on which there is no well capable of producing oil or gas in paying quantities, shall automatically terminate by operation of law if the lessee fails to pay the rental on or before the anniversary date of such lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The termination of the lease for failure to pay the rental must be noted on the official records of the proper office. Upon such notation the lands included in such lease will become subject to the filing of new lease offers only as provided for in Subpart 3112.

(b) *Exceptions.* If the rental payment due under a lease is paid on or before its anniversary date but either the amount of the payment has been or is hereafter deficient and the deficiency is nominal as defined in this section, or the amount of payment made was determined in accordance with the rental or acreage figure stated in the lease or stated in a bill or decision rendered by an authorized officer and such figure is found to be in error resulting in a deficiency, such lease shall not have automatically terminated unless (1) a new lease had been issued prior to May 12, 1970, or (2) the lessee fails to pay the deficiency within the period prescribed in the Notice of Deficiency provided for in this section. A deficiency will be considered nominal if it is not more than $10 or five per centum (5 percent) of the total payment due, whichever is more. The authorized officer will send a Notice of Deficiency to the lessee on a form approved by the Director. The notice will be sent by certified mail, return receipt requested, and will allow the lessee 15 days from the date of receipt or until the due date, whichever is later, to submit the full balance due to the appropriate office. If the payment called for in the notice is not paid within the time allowed, the lease will have terminated by operation of the law as of its anniversary date.

(c) *Reinstatement.* (1) Except as hereinafter provided, the authorized officer may reinstate a terminated lease which has been or is hereafter terminated automatically by operation of law for failure to pay on or before the anniversary date the full amount of rental due, provided that (i) such rental was paid or tendered within 20 days thereafter, and (ii) it is shown to the satisfaction of the authorized officer that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, and (iii) a petition for reinstatement, together with the required rental, including any back rental which has accrued from the date of termination of the lease, is filed with the appropriate office within 15 days after receipt of

Notice of Termination of Lease due to late payment of rental. The Notice of Termination will be sent by certified mail, return receipt requested. Notices of Termination will not be sent to lessees whose leases terminated prior to May 12, 1970. Lessees whose leases terminated prior to May 12, 1970, must file petitions for reinstatement with the appropriate office by close of business on December 31, 1971. Such petitions are subject to all other appropriate provisions of this section.

(2) The burden of showing that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence will be on the lessee. Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. The authorized officer may require evidence, such as post office receipts, of the time of sending or delivery of payments.

(3) Under no conditions will a terminated lease be reinstated if (i) a valid oil and gas lease has been issued prior to the filing of petition for reinstatement affecting any of the lands covered by that terminated lease, or (ii) the Federal oil and gas interests in the lands have been withdrawn or disposed of, or have otherwise become unavailable for oil and gas leasing; however, the authorized officer will not issue a new lease for lands covered by a lease which terminates automatically until 90 days from the date of termination.

(4) Reinstatement of terminated leases is discretionary with the Secretary.

(d) *Extension of terms of reinstated leases.* In any case where a reinstatement of a terminated lease is granted under this section and the authorized officer finds that the reinstatement of such lease will not afford the lessee a reasonable opportunity to continue operations under the lease, the authorized officer may, at his discretion, extend the term of such lease for such period as he believes will give the lessee such an opportunity. Such extensions shall be subject to the following conditions:

(1) No extension shall exceed a period equivalent to the time (i) beginning when the lessee knew or should have known of the termination and (ii) ending on the date on which the authorized officer grants such petition.

(2) No extension shall exceed a period equal to the unexpired portion of the lease or any extension thereof remaining at the date of termination.

(3) When the reinstatement occurs after the expiration of the term or extension thereof, the lease may be extended from the date the authorized officer grants the petition.

(e) *Service of documents.* The rules governing filing and service of documents set out in § 1840.0-6(e) of this chapter shall apply to notices of deficiency and termination issued under the provisions of this section.

[36 FR 21035, Nov. 3, 1971]

§ 3108.3 Cancellation; bona fide purchasers.

(a) Whenever the lessee fails otherwise to comply with any of the provisions of the Act, of the regulations issued thereunder or of the lease, such lease may be canceled by the Secretary of the Interior if not known to contain valuable deposits of oil or gas after notice to the lessee in accordance with section 31 of the Act, if default continues for the period prescribed in that section after service of notice thereof. Any lessee of a lease which issued prior to July 29, 1954, may at any time prior to the anniversary date of such lease and the accrual of rental elect to subject the lease to the automatic termination provisions of this section by notifying, in writing, the authorized officer of the proper office to that effect.

(b) A lease known to contain valuable deposits of oil or gas may be canceled only by judicial proceedings in the manner provided in sections 27 and 31 of the Act.

(c) A lease or interest therein shall not be canceled to the extent that such action adversely affects the title or interest of a bona fide purchaser even though such lease or interest, when held by a predecessor in title, may have been subject to cancellation.

All purchasers are on notice as to all pertinent regulations and all Bureau of Land Management records pertaining to the lease and the lands covered by the lease.

(d) Prompt action shall be taken to dismiss as a party to any proceedings with respect to a violation of any provisions of the Act, these regulations or the lease terms any person who shows the holding of an interest as a bona fide purchaser without having violated any provisions of the Act. No hearing shall be necessary upon such showing unless prima facie evidence is presented to indicate a possible violation on the part of the alleged bona fide purchaser.

(e) If during any such proceeding a party thereto files a waiver of his/her rights under the lease to drill or to assign his/her interest thereto, or if such rights are suspended by order of the Secretary of the Interior pending a decision, payment of rentals and the running of time against the term of the lease or leases involved shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver for suspension.

[45 FR 35163, May 23, 1980]

Subpart 3109—Surface Management Requirements

SOURCE: 35 FR 9688, June 13, 1970, unless otherwise noted.

§ 3109.1 General.

§ 3109.1-1 Surface, natural resources, and improvements.

§ 3109.1-2 Antiquities and objects of historical value.

§ 3109.2 Public domain.

§ 3109.2-1 Bureau of Land Management stipulations.

The Bureau of Land Management may require such special stipulations as are necessary for the protection of the lands embraced in any permit or lease.

(See Montana Power Decision A 30310 December 3, 1965, I.M. No. 65-560 December 23, 1965)

§ 3109.3 Acquired lands.

§ 3109.3-1 Consent of agency.

Leases or permits may be issued only with the consent of the head or other appropriate official of the executive department, independent establishment or instrumentality having jurisdiction over the lands containing the deposits, or holding a mortgage or deed of trust secured by such lands, and subject to such conditions as that official may prescribe to insure adequate utilization of the lands for the primary purpose for which they were acquired or are being administered.

§ 3109.4 Reserved, withdrawn, or segregated lands.

§ 3109.4-1 Requirements.

With respect to lands embraced in a reservation or segregated for any particular purpose the lessee shall conduct operations in conformity with such requirements as may be made by the Bureau of Land Management for the protection and use of the land for the purpose for which it was reserved or segregated, so far as may be consistent with the use of the land for the purpose of the lease, which latter shall be regarded as the dominant use unless otherwise provided or separately stipulated.

§ 3109.4-2 Special stipulations.

Offerors for noncompetitive oil and gas leases and applicants for permits, leases, and licenses for lands, the surface control of which is under the jurisdiction of the Department of Agriculture, will be required to consent to the inclusion therein of the stipulation on a form approved by the Director. Where the lands have been withdrawn for reclamation purposes the offeror or applicant will be required to consent to the inclusion of a stipulation on the approved forms. If the land is potentially irrigable, or if the land is within the flow limits of a reservoir site or within the drainage area of a constructed reservoir, or if withdrawn for power purposes, or where the lands have been withdrawn as Game Range Lands, Coordination Lands, or Alaska Wildlife Areas, the offeror or applicant will be required to consent to the inclusion of a stipulation on an approved form. Additional conditions may be imposed to protect the land withdrawn if deemed necessary by the agency having jurisdiction over the surface.

§ 3109.5 Special acts.

§ 3109.5-1 Requirements.

§ 3109.5-2 Special stipulations.

(a) *Rights-of-way.*

(b) *Nevada.*

(c) *Lands patented to the State of California.*

(d) *National forest lands in Minnesota.* Leases or permits under the act of June 30, 1950, may be issued only with the prior consent of the Secretary of Agriculture or his delegate, and subject to such conditions and stipulations as that official may prescribe to insure adequate utilization and protection of the lands for the primary national forest purpose for which they are being administered.

(e) *Lake Mead recreation area.*

(f) *National Forest Wilderness.* (1) All mineral leases, licenses, and permits covering lands within National Forest Wilderness, issued on or after September 3, 1964, shall contain such stipulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act for the protection of the wilderness character of the lands consistent with the use of the lands for the purposes for which they are leased, licensed, or permitted. In addition to containing such stipulations as may be prescribed by the Secretary of Agriculture, any mineral lease, license, or permit covering lands within National Forest Wilderness shall contain a provision that it is issued subject to the provisions of the Wilderness Act and the regulations issued thereunder.

(2) All persons seeking or holding a mineral lease, license, or permit covering lands within National Forest Wilderness issued on or after September 3, 1964, should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the applicable regulations of the Secretary of Agriculture.

(g) *Whiskeytown-Shasta-Trinity national recreation area.* Any lease or permit respecting minerals in lands administered by the Secretary of Agriculture shall be issued only with his consent and subject to such conditions as he may prescribe.

PART 3110—NONCOMPETITIVE LEASES

Subpart 3110—Noncompetitive Leases

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NOTE: At 44 FR 64085, Nov. 6, 1979, provisions of Part 3110 were suspended in part. At 46 FR 37250, July 20, 1981, the suspension was removed, except for military lands on which there are applications filed prior to September 21, 1978.

Subpart 3110—Noncompetitive Leases

Source: 35 FR 9689, June 13, 1970, unless otherwise noted.

§ 3110.1-1 Duration of lease.

All noncompetitive leases shall be for a primary term of 10 years and so long thereafter as oil or gas is produced in paying quantities.

(a) *Special acts*—(1) *Rights-of-way.* The term of the lease will be for a period of not more than 20 years and the compensatory royalty agreement will be for the period necessary to reasonably extract all oil and gas from the right-of-way.

§ 3110.1-2 Dating of leases.

All noncompetitive oil and gas leases, excepting renewal leases, will be dated as of the first day of the month following the date the leases are signed on behalf of the lessor except that where prior written request is made a lease may be dated the first of the month within which it is so signed.

§ 3110.1-3 Acreage limitation.

(a) *Public domain.* An offer may not include more than 10,240 acres. The lands in the offer shall be entirely within an area of 6 miles square or within an area not exceeding 6 surveyed sections in length or width measured in cardinal directions. No offer may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation or such a plan has been approved as to form by the Director of the Geological Survey or where the land is surrounded by lands not available for leasing under the Act.

(b) *Acquired lands.* An offer may not include more than 10,240 acres. An offer shall be entirely within an area of 6 miles square or within an area not exceeding 6 surveyed sections in length or width measured in cardinal directions. An offer may exceed the 6 mile square limit if:

(1) The lands are not surveyed under the rectangular survey system of public land surveys and are not within the area of the public land surveys; and

(2) The tract desired is described by the acquisition tract number assigned by the acquiring agency and less than 50 percent of the tract lies outside the 6 mile square area.

[45 FR 35163, May 23, 1980]

§ 3110.1-4 Withdrawal of offer or application.

(a) *Regular filings.* An offer may not be withdrawn, either in whole or in part unless the withdrawal is received by the proper office before the lease, an amendment of the lease, or a separate lease whichever covers the land described in the withdrawal, has been signed on behalf of the United States.

(b) *Simultaneous filings.* An applicant may withdraw his/her simultaneous oil and gas lease application prior to selection, except as provided in § 3112.3-2 of this title. A simultaneous oil and gas lease offer may be withdrawn in the same manner as a regular offer, as described in paragraph (a) of this section.

[35 FR 9689, June 13, 1970, as amended at 45 FR 35163, May 23, 1980]

§ 3110.1-5 Amendment to lease.

If any of the land described in item 2 of the offer is open to oil and gas filing when the offer is filed but is omitted from the lease for any reason and thereafter becomes available for leasing to the offeror, the original lease will be amended to include the omitted land unless, before the issuance of the amendment, the land office receives a withdrawal of the offer with respect to such land or an election to receive a separate lease in lieu of an amendment Such election shall consist of a signed statement by the offeror asking for a separate lease accompanied by a new offer on the required form describing the remaining lands in his original offer executed pursuant to this section. The new offer will have the same priority as the old offer. It need not be accompanied by the filing fee. The rental payment held on the original offer will be applied to the new offer. The rental and the lease term for the land added by such an amendment shall be the same as if the land had been included in the original lease when it was issued. If a separate lease is issued, it will be dated in accordance with § 3110.1-2.

§ 3110.1-6 Determination of priorities.

(a) *Regular filing.* No lease shall be issued before final action has been taken on (1) any prior offer to lease the land, (2) any subsequent offer to lease the land, that is based upon an alleged preferential right and (3) any petition for the renewal or reinstatement of an existing or former lease on the land. If a lease is issued before final action has been taken on such an offer or petition, it shall be canceled, after due notice to the lessee, if the offeror or petitioner is found to be qualified and entitled to receive a lease on the land. Offers to lease which cover lands subject to regular filings and which are received in the same mail or over the counter at the same time, will be considered as having been filed simultaneously and priority to the extent of the conflicts between them will be determined by a public drawing.

(b) *Simultaneous filings.* If more than one lease application is filed for a parcel under the provisions of Subpart 3112 of this title, their priority shall be determined by a random selection.

[35 FR 9689, June 13, 1970, as amended at 45 FR 35163, May 23, 1980]

§ 3110.1-7 Land description.

(a) *Variation in land description.* If there is any variation in the land descriptions among the five copies of the official forms, the copy showing the date and time of receipt in the land office will control.

§ 3110.1-8 Rejection.

If, after the filing of an offer for a noncompetitive lease and before the issuance of a lease pursuant to that offer, the land embraced in the offer becomes within a known geological structure of a producing oil or gas field, the offer will be rejected and will afford the offeror no priority.

Subpart 3111—Regular Offers

SOURCE: 35 FR 9690, June 13, 1970, unless otherwise noted.

§ 3111.1 Requirements.

§ 3111.1-1 Public domain.

(a) *Application*—(1) *Forms.* Except as provided in Subpart 3112, to obtain a noncompetitive lease an offer to accept such lease must be made on a form approved by the Director, "Offer to lease and lease for oil and gas," or on unofficial copies of that form in current use: *Provided,* That the copies are exact reproductions of one page of both sides of the official approved one page form and are without additions, omissions or other changes or advertising. The official form or a valid reproduction of the official form will also constitute the lease when signed by the Authorizing officer of the Proper Office. Each offer must be filled in by typewriter or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney-in-fact or agent. Five copies of the official form, or valid reproduction thereof, for each offer to lease shall be filed in the proper office (see § 3000.5 of this chapter). For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours.

(b) *Qualifications.* Compliance with Subpart 3102 is required.

(c) *Approval.* The United States will indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease by the signature of the appropriate officer thereof in the space provided. An executed copy of the lease will be mailed to the offeror at the address of record.

(d) *Rejection.* Except as provided in this section an offer which is not filed in accordance with the regulations in this part will be rejected and will afford the offeror no priority.

(e) *Curable defects.* An offer to lease containing any of the following deficiencies will be approved by the signing officer provided all other requirements are met:

(1) An offer deficient in the first year's rental by not more than 10 percent. The additional rental must be

paid within 30 days from notice under penalty of cancellation of the lease.

(2) An offer completed in pencil or script.

(3) An offer on a lease form not currently in use.

(4) An offer on a form not correctly reproduced provided it contains the statement that the offeror agrees to be bound by the terms and conditions of the lease form in effect at the date of filing.

[35 FR 9690, June 13, 1970, as amended at 45 FR 35163, May 23, 1980]

§ 3111.1-2 Acquired lands.

(a) *Application*—(1) *Forms.* Except as provided in Subpart 3112, to obtain a noncompetitive oil and gas lease of an existing mineral interest whether the Government's interest be whole or fractional, an offer to lease must be made on a form approved by the Director, "Offer to Lease and Lease for Oil and Gas; Noncompetitive Acquired Lands" or unofficial copies of that form in current use: *Provided,* That the copies are exact reproductions of one page of both sides of the official approved one-page form and are without additions, omissions, or other changes or advertising. An official form approved by the Director, or a valid reproduction, will also constitute the lease, when signed by the authorized signing officer of the Bureau of Land Management. Seven copies of the official form, or valid reproduction thereof, for each offer to lease shall be filed in the proper office (see § 3000.5). For the purposes of this part an offer will be considered filed when it is received in the proper office during business hours.

(2) *Qualifications.* Compliance with Subpart 3102 is required.

(3) *Approval.* Such application or offer will be considered only as to the acquired lands described therein. If public domain lands or minerals are also included the application or offer will be rejected as to such lands or minerals.

(4) *Rejection.* Except as provided in Subpart 3112 an offer which is not filed in accordance with the applicable regulations in Subpart 3110 or this part will be rejected and will afford the applicant no priority.

(5) *Surface jurisdiction*—(i) *Showing required.* All applications and offers for permits or leases should name, if practicable, the Government agency from which consent to the issuance of a permit or lease must be obtained, or the agency that may have title records covering the ownership of the mineral interest involved, and identify the project, if any, of which the land is a part. Permits or leases to which such consent is necessary will not be issued until the lessee or permittee executes such stipulations as may be required by the consenting agency.

(ii) *Transfer of surface control.* Where the United States has conveyed the title to, or otherwise transferred the control of the surface of the lands containing the deposits to any State or any political subdivision, agency or instrumentality thereof, or a college or any other educational corporation or association, or a charitable or religious corporation or association, such party shall be given written notification by certified mail of the application for the permit or lease, and shall be afforded a reasonable period of time within which to suggest any stipulations deemed by it to be necessary for the protection of existing surface improvements or uses to be included in the permit or lease, setting forth the facts supporting the necessity thereof, and also to file any objections it may have to the issuance thereof. Where such party opposes the issuance of the permit or lease, the facts submitted in support must be carefully considered and each case separately decided on its merits. However, such opposition affords no legal basis or authority to refuse to issue the permit or lease for the reserved minerals in the lands; in such case, the final determination whether to issue the permit or lease depends upon whether the interests of the United States would best be served thereby.

(6) *Acreage holdings.* Each offer or application for a lease or permit must contain a statement that applicant's interest, direct or indirect, in leases, permits, or applications for similar minerals does not exceed the maximum chargeable acreage permitted to be held for that mineral in federally

owned acquired lands in the same State.

(7) *Other regulations applicable.* Except as otherwise specifically provided in this part the regulations prescribed under the mineral leasing laws, and contained in Subpart 3110 and § 3111.1 shall govern the disposal and development of minerals under the act.

§ 3111.1-3 Special acts.

(a) *Rights-of-way*—(1) *Application.* No particular form of application for lease of land in a right-of-way will be required. Applications shall be filed in the proper office. Such applications must be filed by the owner of the right-of-way or by his assignee and be accompanied by a filing fee of $25, and, if filed by an assignee, by a duly executed assignment of the right to lease. The application should detail the facts as to the ownership of the right-of-way, and of the assignment if the application is filed by an assignee; the development of oil and gas in adjacent or nearby lands, the location and depth of the wells, the production, and the probability of drainage of the deposits in the right-of-way. Since rights-of-way are of record in the Bureau of Land Management, a description by metes and bounds is not necessary or required, but each legal subdivision through which the portion of the right-of-way desired to be leased extends should be described.

(2) *Compensatory royalty.* After the Bureau of Land Management has determined that a lease of a right-of-way or any portion thereof is consistent with the public interest, either upon consideration of an application for lease or on his own motion, the authorizing officer of the proper office will serve notice on the owner or lessee of the adjoining lands, as provided in section 3 of the act of May 21, 1930 (46 Stat. 374; 30 U.S.C. 303), allowing him 30 days or such other time as may be provided in the notice within which to submit an offer or bid of the amount or percentage of compensatory royalty such owner or lessee will agree to pay for the extraction through wells on his adjoining land of the oil and gas under and from such right-of-way. Notice to the owner of the right-of-way will be given at the same time allowing him opportunity within the same period to submit a bid or offer as to the amount or percentage of royalty he will pay if a lease is awarded to him.

(3) *Award of lease or compensatory royalty agreement.* Award of lease to the owner of the right-of-way, or of a contract for the payment of compensatory royalty by the owner or lessee of the adjoining lands will be made to the bidder whose offer is determined to be to the best advantage to the United States, considering the amount of royalty to be received and the better development of the oil and gas deposits in the right-of-way under the respective means of production and operation.

(4) *Forms*—(i) *Compensatory royalty agreement.* The agreement with the owner or lessee of the adjoining land to pay compensatory royalty for the extraction through wells on his adjoining land of the oil and gas in or under the right-of-way will be on a form approved by the Director.

(ii) *Lease.* The lease issued to the owner of the right-of-way or assignee of such owner will be on a form approved by the Director, modified to conform to the requirements of the law and these regulations.

(iii) *Bond.* The bond required under section 2(a) of the lease and by the contractor under agreement to pay compensatory royalty, should be on a form approved by the Director.

(5) *Royalty charge.* The royalty to be charged will be fixed by the Bureau of Land Management, after consideration of all the facts and circumstances in each case, but will not be less than 12½ percent.

(6) *Duration.* The term of the lease will be for a period of not more than 20 years, and the compensatory royalty agreement will be for the period necessary to reasonably extract all oil and gas from the right-of-way.

(b) *Nevada*—(1) *Applicability of regulations.* Deposits of oil and gas within the lands shall be subject to disposal pursuant to the applicable regulations issued under the Act of February 25, 1920 (41 Stat. 437) as amended.

(c) *Lands patented to the State of California*—(1) *Minerals to be leased.* All disposal of minerals within the reserved areas covered by this section shall be by lease.

(2) *Applicability of other regulations.* The regulations contained in Subparts 3110 and 3111 to the extent that they are applicable and not inconsistent with this section shall govern oil and gas leases issued under this section.

(3) *Notice of application.* The authorized officer of the proper office will notify the surface owner or his authorized representative of each application received. Notice of any proposed offer of lands for lease will also be given to the surface owner prior to publication thereof. Should the surface owner object to the leasing of any tract for reasons determined by the authorized officer to be satisfactory the application will be rejected or the offer of the land for lease will be withheld.

(4) *Terms and conditions*—(i) *Protection of surface.* All leases issued shall be conditioned upon compliance by the lessee with all of the laws or rules and regulations of the surface owner for the safeguarding and protection of the plant life, scenic features and park or recreational improvements on the land, not inconsistent with the terms of the lease or this section. The lease shall also provide that any mining work performed upon the lease shall be located consistent with any requirements of the owner of the surface necessary to the protection of the surface rights and uses and so conducted as to result in the least possible injury to plant life, scenic features and improvements and that, upon completion of the mining operation, all excavations, including wells, shall be closed and the property be conditioned for abandonment to the satisfaction of the surface owner. The lease shall further provide that any use of the lands for ingress to and egress from the mine for all necessary purposes shall be on a route to be first approved by the surface owner or his duly authorized representative.

(ii) *Bonds.* Each lessee will be required to furnish a bond in such sum as may be determined adequate, in no case less than $1,000, to insure compliance with the terms of the lease and for the protection of the surface owner.

(iii) *Form of lease.* Oil and gas leases will be issued on forms approved by the Director, with such changes in language as may be required.

(5) *Operating regulations.* All lessees will be required to operate under the applicable operating regulations of this Department. The operating regulations are contained in 30 CFR Chapter II Part 221.

(d) *National forest lands in Minnesota*—(1) *Minerals to be leased.* All disposal of mineral resources covered by this regulation shall be by lease or permit.

(2) *Consent of Secretary of Agriculture.* Leases or permits under the act of June 30, 1950, may be issued only with the prior consent of the Secretary of Agriculture or his delegate, and subject to such conditions and stipulations as that official may prescribe to insure adequate utilization and protection of the lands for the primary national forest purpose for which they are being administered.

(3) *Regulations applicable.* See Subparts 3110 and 3111. Any lease issued under this subpart shall state that it is subject to the terms and provisions of the act of June 30, 1950.

(e) *Lake Mead Recreation Area*—(1) *Authority to lease.* The Act of October 8, 1964 (78 Stat. 1039; 16 U.S.C. 460n) provides for mineral leasing within the Lake Mead Recreation Area, subject to such limitations, conditions, or regulations as the Secretary may prescribe, and to such extent as will not be inconsistent with either the recreational use or the primary use of that portion of the area heretofore withdrawn for reclamation purposes.

(2) *Regulations applicable.* Mineral deposits of oil and gas shall be governed by regulations issued under the Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181), as amended.

(3) *Area subject to lease.* The area subject to the regulations in this part is that area of land and water which is shown on a certain map identified as "boundary map, RA-LM-7060-B, revised July 17, 1963," which is on file and which is available for public inspection in the office of the Director

of the National Park Service and in the headquarters office of the Superintendent of the Lake Mead National Recreation Area. The area subject to these regulations may be revised by the Secretary as authorized in the act.

(4) *Excepted areas.* Mineral deposits and materials in the following areas shall not be open to disposal under the provisions of this part:

(i) All lands within 200 feet of the center line of any public road, or within 200 feet of any public utility including but not limited to, electric transmission lines, telephone lines, pipe lines, and railroads.

(ii) All land within the smallest legal subdivision of the public land surveys containing a spring or water hole, or within one-quarter of a mile thereof on unsurveyed public land.

(iii) All land within 300 feet of Lake Mead or Lake Mohave, measured horizontally from the shore line at maximum water surface elevation and all lands within the area of supervision of the Bureau of Reclamation around Hoover and Davis Dams as shown on the map of the Lake Mead National Recreation Area (NRA—L.M. 2291).

(iv) All land within any developed and/or concentrated public use area or other area of outstanding recreation significance as designated by the Superintendent on the map (NRA—L.M. 2297), of Lake Mead National Recreation Area which will be available for inspection in the office of the Superintendent.

(f) *National Forest Wilderness*—(1) *Applicability of laws and regulations.* Until midnight, December 31, 1983, all laws pertaining to mineral leasing and the regulations of this chapter pertaining thereto effective during such period, shall, to the same extent as applicable before September 3, 1964, extend to National Forest Wilderness, subject to the provisions of such regulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act.

(2) *Stipulations required.* All mineral leases, licenses, and permits covering lands within National Forest Wilderness, issued on or after September 3, 1964, shall contain such stipulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act for the protection of the wilderness character of the lands consistent with the use of the lands for the purposes for which they are leased, licensed, or permitted. In addition to containing such stipulations as may be prescribed by the Secretary of Agriculture, any mineral lease, license, or permit covering lands within National Forest Wilderness shall contain a provision that it is issued subject to the provisions of the Wilderness Act and the regulations issued thereunder.

(3) *Applicable regulations of Secretary of Agriculture.* All persons seeking or holding a mineral lease, license, or permit covering lands within National Forest Wilderness, issued on or after September 3, 1964, should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the applicable regulations of the Secretary of Agriculture.

(4) *Withdrawal from mineral leasing.* Effective at midnight, December 31, 1983, subject to valid rights then existing, the minerals in lands within National Forest Wilderness are withdrawn from leasing by virtue of the provisions of section 4(d)(3) of the Wilderness Act.

(g) *Whiskeytown-Shasta-Trinity National Recreation Area.* Applicability of regulations. Mineral deposits of oil and gas shall be governed by the Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181-263), as amended.

[35 FR 9690, June 13, 1970, as amended at 46 FR 45887, Sept. 15, 1981]

Subpart 3112—Simultaneous Filings

SOURCE: 45 FR 35163, May 23, 1980, unless otherwise noted.

§ 3112.1 Parcels.

§ 3112.1-1 Availability of lands.

All lands which are not within a known geological structure of a producing oil or gas field and are covered by canceled or relinquished leases, leases which automatically terminate for non-payment of rental pursuant to 30 U.S.C. 188, or leases which expire by operation of law at the end of their primary or extended terms are subject to leasing only in accordance with this subpart. Other lands which are not within a known geological structure of a producing oil or gas field may be leased in accordance with this subpart.

§ 3112.1-2 Posting of notice.

At the start of business on the first working day of January, March, May, July, September and November, a list of the lands for which applications shall be received shall be posted in the proper Bureau of Land Management State Office. The list shall include a notice stating that such lands are subject to the filing of lease applications from the time of such posting, until the close of business on the fifteenth working day thereafter. The available lands shall be described in leasing units identified by parcel numbers. The lands shall also be described by subdivision, section, township and range if the lands are surveyed or officially protracted; or if unsurveyed, by metes and bounds. The list shall include a statement as to, and a copy of, any standard or special stipulation applicable to each parcel. Copies of the posted notice may be purchased by mail or over the counter from the proper office.

§ 3112.2 How to file an application.

§ 3112.2-1 Simultaneous oil and gas lease applications.

(a) An application to lease under this subpart consists of a simultaneous oil and gas lease application on a form approved by the Director, Bureau of Land Management, completed, signed and filed pursuant to the regulations in this subpart. The first applicant for a lease, as determined under the regulations in this subpart, who is qualified to hold a lease under the Act and the regulations in this title shall be entitled to submit an offer for the lease as described in § 3112.4-1 of this title.

(b) The application shall be holographically (manually) signed in ink by the applicant or holographically (manually) signed in ink by anyone authorized to sign on behalf of the applicant. Applications signed by anyone other than the applicant shall be rendered in a manner to reveal the name of the applicant, the name of the signatory and their relationship. (Example: Smith, agent for Jones; or Jones, principal, by Smith, agent.) Machine or rubber stamped signatures shall not be used.

(c) The name of only one citizen, association, corporation or municipality may appear as applicant on any application. The application shall be dated at the time of signing. The date shall reflect that the application was signed within the filing period.

(d) The application shall include the applicant's personal or business address. All communications relating to leasing shall be sent to that address and it shall constitute the applicant's address of record for the purpose provided in § 3112.4-1 of this title. The applicant shall not use the address of any other person or entity which is in the business of providing assistance to those participating in the simultaneous oil and gas leasing system.

(e) The parcel applied for shall be identified by the proper parcel number, including the State prefix, as shown on the posted notice.

(f) No person or entity shall hold, own or control any interest in more than one application for a particular parcel.

(g) The properly completed and signed lease application shall be filed in the proper office of the Bureau of Land Management.

§ 3112.2-2 Filing fees.

(a) Each filing shall be accompanied by a $25 filing fee. The filing fee shall be paid in U.S. currency. Post Office or bank money order, bank cashier's check or bank certified check, made payable to the Bureau of Land Management. Checks drawn on foreign banks shall not be accepted.

(b) A single remittance is acceptable for a group of filings. Failure to submit sufficient fees to cover all filings shall render unacceptable the entire group of filings submitted with that remittance. Such filings shall be returned to the applicant in accordance with § 3112.5 of this title.

(c) An uncollectible remittance covering the filing fee(s) shall result in disqualification of all filings covered by it. In such a case, the amount of the remittance shall be a debt due to the United States which shall be paid before the applicant is permitted to participate in any future selection.

[45 FR 35163, May 23, 1980, as amended at 46 FR 45887, Sept. 15, 1981]

§ 3112.2-3 Qualifications.

Evidence of qualifications to hold Federal oil and gas leases shall be filed in accordance with Subpart 3102 of this title.

§ 3112.3 The first qualified applicant.

§ 3112.3-1 Selection procedures.

(a) Three applications shall be randomly selected for each numbered parcel. The order in which they are selected shall fix the order in which the successful applicant shall be determined. Where only 2 applications are filed for a particular parcel, their priority shall be established through the selection process. A single filing shall automatically be considered the successful application.

(b) The results of the selection process shall be posted in the proper Bureau of Land Management office where the selection was held.

(c) All unsuccessful applicants shall be notified in writing or by return of their applications.

(d) Successful applicants shall be notified in accordance with § 3112.4-1 of this title.

(e) When the lease is issued to the first qualified applicant, unsuccessful applicants selected with lower priority for the lease shall be notified in writing or by return of their application.

§ 3112.3-2 Reselection procedures.

If a properly filed application is omitted from the selection process, a new selection shall be held. An omitted application may not be withdrawn by the applicant. The new selection shall consist of the omitted application(s) and the number of blank applications equal to the number of applications which were included in the first selection. Such selection shall be conducted in the same manner as the original selection. If the omitted application is not selected first, second or third priority in the new selection, the priority established in the original selection shall stand. However, if an omitted application is selected in the first, second or third priority, it shall displace the application selected with the same and lower priorities in the original selection. No applications chosen in the first selection shall be eliminated from priority as a result of the selection of an omitted application in the reselection. The number of priorities shall be increased as necessary.

§ 3112.4 Lease issuance.

§ 3112.4-1 The lease offer and payment of first year's rental.

(a) The lease agreement, consisting of a lease form approved by the Director, Bureau of Land Management, and stipulations included on the posted list or later determined to be necessary, shall be forwarded to the first qualified applicant for signing, together with a request for payment of the first year's rental. Only the personal handwritten signature of the prospective lessee, or his/her attorney-in-fact as described in paragraph (b) of this section, in ink shall be accepted. The first year's rental shall be paid only by the applicant, or his/her attorney-in-fact as described in paragraph (b) of this section. The executed lease agreement and the applicant's rental payment shall be filed in the proper Bureau of Land Management office within 30 days from the date of receipt of notice. Timely receipt of the properly signed lease and rental constitutes the applicant's offer to lease.

(b) An attorney-in-fact may sign the lease offer and pay the first year's rental only if the power of attorney prohibits the attorney-in-fact from filing offers on behalf of any other participant; if the power of attorney specifically authorizes the attorney-in-fact to execute on behalf of the participant all offers, statements of interest and of holdings and other statements required, or which may be required, by the Act or the regulations; and if the power of attorney binds the participant to representations made on its behalf by the attorney-in-fact and waives any and all defenses which may be available to the participant to contest, negate or disaffirm the actions of the attorney-in-fact under the power of attorney. Any attorney-in-fact signing a lease offer or paying the first year's rental on behalf of the prospective lessee shall file, together with the offer and/or rental, a copy of his/her power of attorney or reference to the serial number under which such authorization is filed over the personal handwritten signature of the prospective lessee in ink. Evidence of the applicant's physical handicap which precludes an ability to sign may be submitted in lieu of the applicant's signature on the power of attorney.

§ 3112.4-2 Acceptance of lease offer.

The signature of the authorized officer on the lease shall constitute the acceptance of the lease offer and the issuance of the lease by the United States.

§ 3112.4-3 Restriction on transfer.

No application, offer, lease or interest therein may be transferred or assigned prior to issuance of the lease as evidenced by the signing of the lease by the authorized officer on behalf of the United States as provided in § 3112.4-2 of this title. No agreement or option to transfer or assign such application, offer, lease or interest therein shall be made or given prior to the effective date of the lease or 60 days from the applicant's receipt of priority, whichever comes first. The existence of such an agreement or option shall result in disapproval of the subsequent assignment.

§ 3112.5 Unacceptable filings.

(a) Applications shall be examined prior to selection and the application or written notice, together with the filing fee, shall be returned to the applicant for any filing which is:

(1) Received prior to the beginning of the simultaneous filing period;

(2) Received after the closing of the filing period;

(3) Accompanied by an unacceptable remittance or insufficient filing fees;

(4) Filed in the wrong office;

(5) Filed without a parcel number or with a parcel number which is not on the current posted notice; or

(6) Filed for a parcel which is withdrawn by the Bureau of Land Management.

(b) Failure to identify a filing as unacceptable prior to selection does not bar rejection after selection for the reasons listed in this section or for any reason set forth in § 3112.6 of this title.

§ 3112.6 Adjudication.

§ 3112.6-1 Rejection of an application.

Rejection is an adjudicatory process which follows selection. Filing fees for rejected filings are the property of the United States and shall not be returned.

(a) *Improper filing.* Any application which is not filed in accordance with § 3112.2 of this title or any application which is unacceptable, as set forth in § 3112.5 of this title, shall be rejected. Misplacement of name or address or incomplete address on the face of form 3112-1 shall not be a basis for rejection until 30 days from posting the list of priority or return of the documents described in § 3112.4-1 of this title as undeliverable, whichever is later.

(b) *Unqualified applicants.* The application of any applicant who is unqualified or has not filed or caused to be filed all evidence of qualification required by Subpart 3102 of this title shall be rejected.

(c) *Prohibited agreements, schemes, plans or arrangements.* Any agreement, scheme, plan or arrangement entered into prior to selection, which gives any party or parties more than a single opportunity of successfully obtaining a lease or interest therein is prohibited and any application made in accordance with such agreement, scheme, plan or arrangement shall be rejected. Specifically:

(1) Any agreement, scheme, plan or arrangement which obligates the applicant to transfer any interest in the lease, if issued, to a third party; or which gives the third party a right of first refusal for the lease, if issued; or which obligates the applicant to use the services of the third party when assigning or transferring any interest in the lease, if issued; is prohibited is such an agreement, scheme, plan or

arrangement exists between the third party and 2 or more applicants for the same parcel or if the third party files for the same parcel as the applicant;

(2) Any agreement, plan or scheme between any person or entity in the business of providing assistance to participants in a Federal oil and gas leasing program and any potential assignee whereby such person or entity will seek to induce an assignment of any lease is prohibited;

(3) Filings by members of an association (including a partnership) or officers of a corporation, under any arrangement, agreement, scheme, or plan whereby the association or corporation has an interest in more than a single filing for a single parcel are prohibited; or

(4) Separate filings by a trustee or guardian in its own behalf and on behalf of one or more beneficiaries on the same parcel or, separate filings by a trustee or guardian on behalf of two or more beneficiaries on the same parcel or, separate filings by the grantor or person with the power of revocation of a revocable trust and the trust, are prohibited.

(d) *Failure to file an offer.* The application of the first qualified applicant shall be rejected if an offer is not filed in accordance with § 3112.4-1 of this title.

(e) *Illegal interests.* The authorized officer shall reject all filings which are made in accordance with any illegal agreement, plan, scheme or arrangement and shall take other appropriate actions including investigations for prosecution under 18 U.S.C. 1001.

§ 3112.6-2 Rejection of an offer.

(a) An offer shall be rejected if the application upon which it is based could have been properly rejected under § 3112.6-1 of this title.

(b) If, prior to the time a lease is issued, all or part of the lands in the offer are determined to be within a known geological structure of a producing oil or gas field, the offer shall be rejected in whole or in part as may be appropriate and the lease, if issued, shall include only those lands not within the known geological structure of a producing oil or gas field.

§ 3112.6-3 Cancellation of leases.

In the event a lease has been issued on the basis of an application or offer which properly should have been rejected or, if any interest in any lease is owned or controlled directly or indirectly in violation of any of the provisions of the Act or regulations in this title, action shall be taken to cancel the interest or lease unless the rights of a bona fide purchaser, as provided for in § 3108.3(c) of this title, intervene. The Government may take action to cancel regardless of whether information showing the application or offer was rejectable is obtained or was available before or after the lease was issued.

§ 3112.7 Availability of unleased lands.

(a) Where, during the filing period, 10 or fewer applications are received for any parcel and no lease issues as a result of such filings, the lands in such parcels shall be subject to leasing only in accordance with Subpart 3111 of this title.

(b) Where more than 10 applications are received for a particular parcel and all successful applicants for that parcel are rejected for any reason, the lands in such parcel shall be subject to leasing only in accordance with this subpart.

(c) If a parcel is made available 3 times on the posted list and no lease issues as a result of such posting, the lands in such parcels shall, in the discretion of the State Director of the appropriate Bureau of Land Management office, be subject to leasing in accordance with Subpart 3111 of this title.

(d) If lands are available in accordance with Subpart 3111 of this title pursuant to paragraphs (a) and (c) of this section, they shall be opened for the filing of lease offers by notice on the next list of lands posted by the proper Bureau of Land Management office under § 3112.1-2 of this title.

PART 3120—COMPETITIVE LEASES

Subpart 3120—Competitive Leases

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3120.1 Terms.
3120.1-1 Duration of lease.
3120.1-2 Dating of leases.
3120.1-3 Acreage limitation.
3120.1-4 Qualifications.
3120.2 Notice of lease sale.
3120.2-1 Initiation of offer.
3120.2-2 Publication of notice.
3120.2-3 Contents of notice.
3120.3 Approval.
3120.3-1 Award of lease.
3120.3-2 Compliance with award notice.
3120.4 Rejection.
3120.4-1 Failure to comply with award notice.
3120.4-2 Deposits on rejected bids.

SOURCE: 35 FR 9692, June 13, 1970, unless otherwise noted.

Subpart 3120—Competitive Leases

§ 3120.1 Terms.

§ 3120.1-1 Duration of lease.

All competitive leases shall be for a primary term of 5 years and so long thereafter as oil or gas is produced in paying quantities.

§ 3120.1-2 Dating of leases.

All competitive oil and gas leases, excepting renewal leases, will be dated as of the first day of the month following the date the leases are signed on behalf of the lessor except that where prior written request is made, a lease may be dated the first of the month within which it is so signed.

§ 3120.1-3 Acreage limitation.

(a) *Maximum lease size.* The lands and deposits subject to disposition under the Act which are within the known geologic structure of a producing oil or gas field will be divided into leasing blocks or tracts in units of not exceeding 640 acres each, which shall be as nearly compact in form as possible.

(b) *Consolidation of units.* If two or more units are awarded to any bidder, such units where the acreage does not exceed 640 acres, may be included in a single lease if circumstances warrant.

§ 3120.1-4 Qualifications.

(a) *Compliance with Subpart 3102 is required*—(1) *Statement required.* Each bidder must submit with his bid a statement over the bidder's own signature with respect to citizenship and interests held. If the successful bidder is a corporation, it must also file a statement similar to that required by § 3102.2-5.

(b) *Deposit required.* The successful bidder at a sale by public auction must on the day of the sale, deposit with the authorized officer of the proper office or other officer conducting the sale, and each bidder, if the sale is by sealed bids, must submit with his bid the following: Certified check on a solvent bank, money order, or cash, for one-fifth of the amount bid by him.

[35 FR 9692, June 13, 1970, as amended at 45 FR 35166, May 23, 1980]

§ 3120.2 Notice of lease sale.

§ 3120.2-1 Initiation of offer.

§ 3120.2-2 Publication of notice.

Notice of the offer of lands for lease at a royalty and rental to be specified in the notice of sale, to the qualified person who offers the highest bonus by competitive bidding either at public auction, or by sealed bids as provided in the notice of sale will be by publication once a week for five consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated, or in such other publications as the authorized officer of the Bureau of Land Management may authorize.

§ 3120.2-3 Contents of notice.

The notice published in a newspaper of general circulation in the county will contain a statement that the successful bidder will be required, prior to the issuance of a lease to pay his proportionate share of the total cost of publication of that notice which shall be that portion of the total advertising cost that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared. The notice will also state the time and place of sale, the manner in which bids may be submitted, the description of the lands, and the terms and conditions of the sale.

§ 3120.3 Approval.

§ 3120.3-1 Award of lease.

Following receipt of the report of the auction, or the opening of the sealed bids, the authorized officer, subject to his right to reject any or all bids, will award the lease to the successful bidder. Notice of his action will be forthwith transmitted to the interested parties through the local office.

§ 3120.3-2 Compliance with award notice.

If the lease be awarded, three copies of the lease on a form approved by the Director, with rental and royalty schedules made a part thereof, will be sent to the successful bidder and he will be required not later than the 15th day after his receipt thereof, or the 30th day after the date of the sale, whichever is later to execute them, pay the balance of his bonus bid, the first year's rental and file a bond as required in Subpart 3104. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease.

[35 FR 9692, June 13, 1970, as amended at 37 FR 10364, May 20, 1972]

§ 3120.4 Rejection.

§ 3120.4-1 Failure to comply with award notice.

If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under this act.

§ 3120.4-2 Deposits on rejected bids.

If any bid be rejected, the deposit will be returned.

PART 3130—FRACTIONAL OR FUTURE INTEREST LEASES AND PERMITS

Subpart 3130—Fractional or Future Interest Leases and Permits

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3130.1 Competitive and noncompetitive.
3130.2 Rental and royalties.
3130.2-1 Rental.
3130.2-2 Royalties and minimum royalties.
3130.3 Public domain.
3130.3-1 Fractional interest offers.
3130.4 Acquired lands.
3130.4-1 General statement.
3130.4-2 Consent of agency and stipulations required.
3130.4-3 Forms.
3130.4-4 Fractional present interests.
3130.4-5 Future and fractional interest offers.

Source: 35 FR 9693, June 13, 1970, unless otherwise noted.

Subpart 3130—Fractional or Future Interest Leases and Permits

§ 3130.1 Competitive and noncompetitive.

Competitive and noncompetitive oil and gas leases for lands in which the United States owns an undivided fractional oil and gas interest may be issued pursuant to the regulations in this part and Subpart 3120.

§ 3130.2 Rental and royalties.

[41 FR 43149, Sept. 30, 1976]

§ 3130.2-1 Rental.

Rental shall not be prorated for any lands in which the United States owns an undivided fractional interest but shall be payable at the same rate as provided in Subpart 3103 of this chapter for the full acreage in such lands.

[41 FR 43149, Sept. 30, 1976]

§ 3130.2-2 Royalties and minimum royalties.

Minimum royalties shall not be prorated for any lands in which the United States owns an undivided fractional interest but shall be payable at the same rate as provided in § 3103.3-5 of this chapter for the full acreage in such lands. Royalty on production shall be payable in the same proportion to royalties provided in Subpart

3103 of this chapter as the undivided fractional interest of the United States in the oil and gas underlying the leased lands is to the full mineral interest.

[41 FR 43149, Sept. 30, 1976]

§ 3130.3 Public domain.

§ 3130.3-1 Fractional interest offers.

An offer for a fractional present interest noncompetitive oil and gas lease must be filed on a form approved by the Director in accordance with Subpart 3111 of this chapter.

[41 FR 43149, Sept. 30, 1976]

§ 3130.4 Acquired lands.

§ 3130.4-1 General statement.

Subject to the provisions of section 3 of the Act, noncompetitive leases for future or fractional interests in lands believed, but not known to contain mineral deposits may be issued whenever the public interest will be best served thereby. Applications and requests to have leases offered competitively for lands known to contain mineral deposits should, to the extent possible, conform to and include the information required by §§ 3101.2-3, 3111.1-2 and this section. The terms and conditions of competitive leases for future or fractional interests in oil and gas deposits within the known geological structure of a producing oil or gas field and of compensatory royalty agreements under § 3100.3-1 covering future or fractional interests, will be established on an individual case basis.

§ 3130.4-2 Consent of agency and stipulations required.

All applications and offers for permits or leases should name, if practicable, the Government agency from which consent to the issuance of a lease must be obtained, or the agency that may have title records covering the ownership of the mineral interest involved, and identify the project if any, of which the land is a part. Leases to which such consent is necessary will not be issued until lessee executes such stipulations as may be required by the consenting agency.

§ 3130.4-3 Forms.

All oil and gas leases for existing interest on acquired lands whether the Government's interest be full or fractional shall be issued on a form approved by the Director. Leases of future interest and fractional future interest shall be issued on a form approved by the Director.

§ 3130.4-4 Fractional present interest.

An offer for a fractional present interest noncompetitive lease must be filed on a form approved by the Director in accordance with Subpart 3111 of this chapter.

[41 FR 43149, Sept. 30, 1976]

§ 3130.4-5 Future and future fractional interest offers.

(a) *Application.* A noncompetitive lease for a whole or fractional future interest will be issued only to an offeror who owns all or substantially all of the present operating rights to the minerals in the lands in the offer as mineral fee owner, as lessee or as an operator holding such rights. An application for a future interest lease filed less than 1 year prior to the date of the vesting in the United States of the present interest in the minerals will be rejected. Upon the vesting in the United States of the present possessory interest in the minerals, all applications for future interest leases outstanding at that time will automatically lapse and thereafter only offers for a present interest lease will be considered. There is no required form for an application or offer to lease a whole or fractional future interest. The application or offer therefor should, however, to the extent applicable, conform to and include the information required by §§ 3101.2-3, 3111.1-2, and this section, and must be accompanied by a certified abstract of title containing record evidence of the creation of, and offeror's right to, the claimed mineral interest. If the offeror acquired the operating rights under a lease or contract, the offer shall also be accompanied by three copies of such lease or contract. In lieu of an abstract, a certificate of title may be furnished. A future interest offer may include tracts in which the United States owns a fractional present interest as well as the future interest for which a lease is sought, but it shall not include tracts where the United States owns the entire mineral interest at the time the offer is made.

(b) *Effective date of lease.* Future interest leases will become effective on the date when the United States becomes vested with the mineral rights as stated in the lease. Where the effective dates of the vesting of the Government's title to the minerals are different for different tracts, separate leases covering each of such different tracts will be issued.

(c) *Supplemental agreement.* As part of the consideration for the issuance of a future interest oil and gas lease and as supplemental thereto, the applicant shall execute and file in triplicate an agreement for approval by the Director. Such agreement will provide for the payment of annual rental in advance at the rate of 25 cents an acre for each tract until the future interest therein becomes possessory or until production is had on the lands described in the lease. After discovery, and until the lease becomes effective as to the respective tracts, the agreement will provide for the payment of a royalty on production, not less than 25 cents per acre per annum, at the particular rate that is applicable; when the interval from the date of receipt of said lease application to the date that the future interest will become possessory is:

	Percent
Not more than 5 years	5
More than 5 years, but not more than 10 years	4
More than 10 years, but not more than 15 years	3
More than 15 years	1

Such agreement will be effective as of the date the lease issues. Such agreement will govern the relationship of the applicant and the United States between its effective date and the respective dates when the lease becomes effective as to each future interest, as set forth in the lease. Where the United States owns both a fractional interest and a fractional future interest in the minerals in the same tract, the supplemental agreement will cover only the fractional future interest in that tract. The lease when issued shall cover both the present and future interests in the land and shall be effective for the present interest held by the United States as of the date for which the lease issues. In such cases and also in all cases where the United States owns only part of the future mineral interest the percentage of royalty specified in the supplemental agreement shall apply to the fractional future interest in that proportion. In lieu of a provision in the agreement for the payment of royalty by the future interest lease holder, the applicant, if not the owner of the present mineral interest, may obtain and file with the Bureau of Land Management an instrument executed in duplicate by the present mineral owner conveying or assigning to the United States the royalty interest set forth in the agreement applicable to the particular terms of years which will elapse before the United States becomes the owner of the mineral rights. If found acceptable, one original of such assignment will be returned to the applicant for recordation at his expense and for return to the Bureau of Land Management. In such case, the supplemental agreement should have endorsed on it by the applicant the statement that the assignment of such royalty interest to the United States is recognized by the holder of the agreement.

(d) *Approval.* Leases for a whole or fractional interest will be issued on a form approved by the Director. Such leases will be sent to the applicant or offeror for execution and return to the proper land office for execution by the appropriate officer. Thereafter, an executed copy will be mailed to lessee.

Group 3200—Geothermal Resources Leasing

PART 3200—GEOTHERMAL RESOURCES LEASING; GENERAL

Subpart 3200—Geothermal Resources Leasing; General

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AUTHORITY: 84 Stat. 1566, 30 U.S.C. 1001-1025.

SOURCE: 38 FR 35082, Dec. 21, 1973, unless otherwise noted.

Subpart 3200—Geothermal Resources Leasing; General

§ 3200.0-3 Authority.

These regulations are issued pursuant to the Geothermal Steam Act of 1970 (84 Stat. 1566; 30 U.S.C. 1001-1025) and rights to develop and utilize geothermal resources in land subject to these regulations may be acquired only in accordance with these regulations.

§ 3200.0-5 Definitions.

As used in Group 3200, the term:

(a) "The Act" means the Geothermal Steam Act of 1970.

(b) "Geothermal lease" means a lease issued under authority of the Act; and unless the context indicates otherwise, "lease" means a "geothermal lease".

(c) "Geothermal resources" means geothermal steam and associated geothermal resources which include:

(1) All products of geothermal processes, embracing indigenous steam, hot water and hot brines; (2) steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations, (3) heat or other associated energy found in geothermal formations; and (4) any byproducts derived from them.

(d) "Byproduct" means (1) any mineral or minerals (exclusive of oil, hydrocarbon gas, and helium) which are found in solution or in association with geothermal steam and which have a value of less than 75 per centum of the value of the geothermal steam or are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves, and (2) commercially demineralized water.

(e) "Sole party in interest" means a party who is and will be vested with all legal and equitable rights under the lease. No one is, or shall be deemed to be, a sole party in interest with respect to a lease in which any other party has any interest in the lease.

(f) "Interest in the lease" means any interest whatever in a geothermal lease, including, but not limited to: A record title interest; a working interest; an operating right; an overriding royalty interest; a claim to any prospective or future advantage or benefit from a lease; a participation in any increment, issue, or profit which may be derived, or accrue in any manner, from the lease based upon, or pursuant to, any agreement or understanding in existence at the time when the offer is filed; and an agreement pertaining to any of the foregoing.

(g) "Supervisor" means a representative of the Secretary, subject to the direction and supervision of the Director, the Chief, Conservation Division, Geological Survey and the appropriate Regional Conservation Manager, Conservation Division, Geological Survey, authorized and empowered to regulate operations and to perform other duties prescribed in the regulations in this part or any subordinate of such representative acting under his direction.

(h) "Primary term" means the first 10 years in the life of the lease, exclusive of any period of suspension of operations or production, or both.

(i) "Area of operation" means that area of the leased lands which is required for exploration, development and producing operations, and which is delineated on a map or plat which is made a part of the approved plan of operations. It encompasses the area generally needed for wells, flow lines, separators, surge tanks, drill pads, mud pits, workshops, and other such facilities used for on-project geothermal resources field exploration, development and production operations.

(j) "Commercial quantities" means quantities sufficient to provide a return after all variable costs of production have been met.

(k) "Known geothermal resource area" or "KGRA" means an area in which the geology, nearby discoveries, competitive interests, or other indicia would, in the opinion of the Secretary, engender a belief in men who are experienced in the subject matter that the prospects for extraction of geothermal steam or associated geothermal resources are good enough to warrant expenditures of money for that purpose.

(1) In determining whether the geology of an area is of such a nature that the area should be designated a KGRA the Director, Geological Survey, acting for the Secretary, shall use such geologic and technical evidence as he shall deem appropriate, including the following:

(i) The existence of siliceous sinter and natural geysers;

(ii) The temperatures of fumaroles thermal springs, and mud volcanoes;

(iii) The SiO_2 content of spring water;

(iv) The Na/K ratio in spring waters of hot-water systems;

(v) The existence of volcanoes and calderas of late Tertiary or Quaternary age;

(vi) Conductive heat flows and geothermal gradient;

(vii) The porosity and the permeability of a potential reservoir;

(viii) The results of electrical resistivity surveys;

(ix) The results of magnetic, gravity, and airborne infrared geophysical surveys; and

(x) The information obtained through other geophysical methods such as microseismic, seismic ground noise, electromagnetic, and telluric surveys if such methods prove to have significant use in evaluation.

(2) For purposes of KGRA classification, a "discovery" or "discoveries" will be considered to be any well deemed by the Director, Geological Survey, to be capable of producing geothermal resources in commercial quantities and, where the geological structure is not known, "nearby" will be considered to be five miles or less from any such discovery. Lands nearby a discovery will be classified as KGRA unless the Geological Survey determines that the lands are on a different geologic structure from the discovery. Where the Geological Survey has determined the extent of a structure on which a discovery has been made, all land in that structural area contributing geothermal resources to that discovery will be deemed a KGRA regardless of the distance from the discovery.

(3) "Competitive interest" shall exist in the entire area covered by an application for a geothermal lease if at least one-half of the lands covered by that application are also covered by another application which was filed during the same application filing period, whether or not that other application is subsequently withdrawn or rejected. Competitive interest shall not be deemed to exist in the entire area covered by an application because of an overlapping application, if less than one-half of the lands subject to the first application are covered by any other single application filed during the same application filing period; however, some of the lands subject to the first application may be determined to be within a KGRA pursuant to the first sentence of this paragraph (k)(3).

(l) "Primarily valuable" means the principal mineral value for which the leasehold is being produced.

§ 3200.0-6 Preleasing procedures.

(a) When an area is initially considered for geothermal leasing or when the need arises, the Director shall request other interested Bureaus and Federal agencies to prepare reports describing, to the extent known, resources contained within the general area and the potential effect of geothermal resources operations upon the resources of the area and its total environment. If the Director determines that the issuance of leases in an area would be a major Federal action significantly affecting the quality of the human environment, he shall issue no leases in that area unless an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) has been issued.

(b) Prior to the final selection of tracts for leasing, the Director, or the head of the agency charged with the administration of the surface, if that officer so elects, shall, when appropriate, evaluate fully the potential effect of the geothermal resources operations pursuant to a leasing program on the total environment, fish and other aquatic resources, wildlife habitat and populations, aesthetics, recreation, and other resources in the entire area during exploratory, developmental, and operational phases. This evaluation will consider the potential impact of the possible development and utilization of the geothermal resources including the construction of power generating plants and transmission facilities on lands which may or may not be included in a geothermal lease. To aid him in his evaluation and selection of tracts the Director shall request and consider the views and recommendations of appropriate Federal agencies, may hold public hearings after appropriate notice, and shall, as appropriate, consult with State agencies, organizations, industries, and lease applicants, and shall consider all other potential factors, such as use of the land and its natural resources, the need for the energy mineral deposits, and socio-economic conditions consistent with multiple-use management principles. If a decision is made to lease, the Director shall develop special terms and conditions to be included in leases as required to protect the environment, to permit use of the land for other purposes, and to protect other natural resources. If tracts are offered for competitive leasing, the notice announcing the availability of the land for leasing will specify the proper BLM office where all terms and conditions to be included in leases for such tracts are available.

§ 3200.0-7 Cross reference.

(a) The regulations governing operations under geothermal leases are found in 30 CFR Part 270.

(b) The regulations setting forth the basic policies for management of the public lands are found in Part 1725 of this chapter.

§ 3200.0-8 Use of surface.

(a) A lessee shall be entitled to use for the production, utilization, and conservation of geothermal resources only so much of the surface of the leased Federal lands as is deemed necessary for such purposes. The lessee shall have the right to use so much of the leased lands as may be deemed necessary for a power generation plant or a commercial or industrial facility, and may apply for the right to use so much of other Federal lands as may be deemed necessary for such purposes; however, any use of the leased lands or other Federal lands for a power generation plant or a commercial or industrial facility will be authorized only under a separate permit issued by the appropriate agency for that specific use and subject to all terms and conditions which it may include in that permit. The uses of the lands within the area of operation are subject to the supervision of the supervisor, and the uses of the remaining leased lands or other Federal lands are subject to the supervision of the appropriate surface management agency. The lessee shall not be entitled to use any mineral materials subject to the Materials Act except as provided by Part 3600 of this chapter.

(b) Operations under other leases or uses on the same lands shall not unreasonably interfere with or endanger operations under leases issued under these regulations nor shall operations under these regulations unreasonably interfere with or endanger operations under any lease, license, claim, permit, or other authorized use pursuant to the provisions of any other Act.

Subpart 3201—Available Lands; Limitations; Unit Agreements

§ 3201.1 Lands subject to geothermal leasing.

§ 3201.1-1 General.

Subject to the exceptions listed below, geothermal leases may be issued in combination or separately for (a) lands administered by the Secretary of the Interior; (b) national forest lands or other lands administered by the Department of Agriculture through the Forest Service; and (c) geothermal resources in lands which have been conveyed by the United States subject to a reservation to the United States of geothermal resources.

§ 3201.1-2 Department of the Interior.

(a) Except as provided in this section, leases may be issued in accordance with the regulations in this part for withdrawn lands, for acquired lands, and for geothermal resources in lands which have passed from Federal ownership subject to a reservation to the United States of the geothermal resources therein where such lands or resources are administered by the Secretary of the Interior.

(b) Notwithstanding any other provision in these regulations, geothermal leases shall not be issued for:

(1) Lands which the Secretary has identified or may identify as being necessary to the performance of his or any other Federal officer's authorized functions, and on which geothermal resource development would in his judgment interfere with such functions; or (2) lands respecting which the Secretary has made or may make a finding that the issuance of geothermal leases would be contrary to the public interest. Upon receipt of an application for a geothermal lease affecting lands withdrawn under section 3 of the Reclamation Act of 1902 (43 U.S.C. 416) or any other appropriate authority, notice thereof and an opportunity to comment thereon shall be given to the head of the agency for whose benefit the withdrawal was made. No geothermal lease affecting lands withdrawn for any agency outside the Department of the Interior shall be leased without the consent of the head of the agency for which the lands are withdrawn. Where leases are issued under Part 3210 of this chapter or Part 3220 for lands neighboring such reserved lands, the lessees shall be required to perform such lease operations and take such measures as are prescribed by the Secretary for the protection of the Federal interests therein.

§ 3201.1-3 Department of Agriculture.

Leases for public, withdrawn or acquired lands administered by the Forest Service, may be issued by the Secretary of the Interior only with the consent of, and subject to such terms and conditions as may be prescribed by, the head of that Department to insure adequate utilization of the lands for the purpose for which they were withdrawn or acquired.

§ 3201.1-4 Federal Power Commission.

Leases for lands to which section 24 of the Federal Power Act, as amended (16 U.S.C. 818), is applicable, may be issued by the Secretary of the Interior only with the consent of, and subject to, such terms and conditions as the Federal Power Commission may prescribe to insure adequate utilization of such lands for power and related purposes.

§ 3201.1-5 Patented lands.

(a) Geothermal resources in lands which have passed from Federal ownership subject to a reservation to the United States of geothermal resources therein may be leased under the regulations in this group subject to the provisions in this part and to such terms and conditions as may be prescribed by the authorized officer to insure adequate protection of the patented lands and any improvements thereon.

(b) Geothermal resources in lands the surface of which has passed from Federal ownership but in which the minerals have been reserved to the United States shall not be developed or produced except under terms and conditions prescribed by the Secretary and pursuant to any agreements made therefor while the question of the title to such resources is being resolved pursuant to the provisions of section 21(b) of the Act.

§ 3201.1-6 Excepted areas.

Leases shall not be issued for lands which are: (a) Administered under the National Park System; (b) within a national recreation area; (c) in a fish hatchery administered by the Secretary, wildlife refuge, wildlife range, game range, wildlife management area, or waterfowl production area, or for lands acquired or reserved for the protection and conservation of fish and wildlife which are designated as rare and endangered species by the Secretary; or under active consideration for inclusion in categories (a), (b), or (c) as evidenced by the filing of an application for a withdrawal or a proposed withdrawal; or (d) tribally or individually owned Indian trust or restricted lands, within or without the boundaries of Indian reservations.

§ 3201.2 Acreage limitations.

(a) *Maximum holdings.* No citizen, association, corporation, or governmental unit shall take, hold, own, or control at one time, whether acquired directly from the Secretary or otherwise, any direct or indirect interest in Federal geothermal leases in any one State exceeding 20,480 acres, including leases acquired under the provisions of section 4(a)-(f) of the Act. Nor may any citizen, association, or corporation be permitted to convert mineral leases, permits, applications therefor, or mining claims, pursuant to the provisions of section 4(a)-(f) of the Act into geothermal leases for more than 10,240 acres.

(b) *Computation.* In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease shall be that party's proportionate part of the total lease acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of the corporation's or association's accountable acreage except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation unless he is the beneficial owner of more than 10 per centum of the stock or other instruments of ownership or control of that association or corporation. Parties owning a royalty or other interest determined by or payable out of a percentage of production from a lease will be charged with a similar percentage of the total lease acreage.

(1) An association shall not be deemed to exist between the parties to a contract for development of leased lands, whether or not coupled with an interest in the lease, nor between co-lessees, but each party to any such contract or each co-lessee will be charged with his proportionate interest in the lease.

(2) Lessees holding acreage in common shall be considered a single entity and cannot hold acreage in excess of the maximum specified in the law for any one lessee.

(c) *Excepted acreage.* Leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior shall not be included in computing accountable acreage. Leases subject to an operating, drilling or development contract approved by the Secretary pursuant to section 18 of the Act, other than communization or drilling agreements, shall be excepted in determining the accountable acreage of the lessees or operators.

(d) *Excess acreage.* (1) Where, as the result of the termination or contraction of a unit or cooperative plan, or the elimination of a lease from operating, drilling, or development plan, a party holds or controls excess accountable acreage, such party shall have 90 days from such termination or contractions or elimination in which to reduce his holdings to the prescribed limitation.

(2) If any person holding or controlling leases or interests in leases is found to hold accountable acreage in violation of the provisions of this section and of the Act, the last lease or leases or interest or interests acquired by him which created the excess acreage holdings shall be canceled or forfeited in their entirety, even though only part of the acreage in the lease or interest constitutes excess holdings, unless it can be shown to the satisfaction of the Director that the holding or control of the excess acreage is not the result of negligence or willful

intent in which event the lease or leases shall be canceled only to the extent of the excess acreage.

(3) Any person holding or controlling leases or interests in leases below the acreage limitation provided in this section, shall be subject to these rules:

(i) If he files an application which causes him to exceed the acreage limitation, that application will be rejected.

(ii) If he files a group of applications at the same time, any one of which causes him to exceed the acreage limitation, the entire group of applications will be rejected.

(4) If any person holding or controlling leases or interests in leases below the acreage limitation provided in this section, acquires a lease or leases, or an interest or interests therein, which cause him to exceed the acreage limitation, his most recently filed application for lease or applications for leases then containing acreage in excess of the limitation provided in this section will be rejected in its or their entirety. For the purpose of this paragraph, time of filing shall be determined by the date of filing marked on the application, or, if the same date is marked on two or more applications, by the serial number of the applications.

(e) *Showing required.* No lease will be issued and no transfer or operating agreement will be approved until it has been shown that the applicant, operator, or transferee is entitled to hold the acreage or obtain the operating rights. At any time upon request by the authorized officer, the record title holder of any lease or a lease operator or a lease applicant may be required to file in the proper BLM office a statement, showing as of a specified date the serial number and the date of each lease of which he is the record holder, or under which he holds operating rights, and each application for lease held or filed by him in the particular State setting forth the acreage covered thereby, and the nature, extent and acreage interest, including royalty interests held by him in any geothermal lease of which the reporting party is not the lessee of record, whether by corporate stock ownership, interest in unincorporated associations and partnerships, or in any other manner.

§ 3201.3 Leases within unit areas.

Before issuance of a geothermal lease for lands within an approved unit agreement, the lease applicant or successful bidder will be required to file evidence that he has entered into an agreement with the unit operator for the development and operation of the lands in a lease if issued to him under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, he will be permitted to operate independently but will be required to perform his operations in a manner which the Supervisor deems to be consistent with the unit operations.

Subpart 3202—Qualifications of Lessees

§ 3202.1 Who may hold leases.

Leases may be issued only to: (a) Citizens of the United States who have reached the age of majority; (b) associations of such citizens; (c) corporations organized under the laws of the United States, any state or the District of Columbia; or (d) governmental units, including, without limitation, municipalities. The term "association" includes a partnership.

§ 3202.2 Statements required to be submitted.

§ 3202.2-1 General.

(a) Each applicant for a lease is required to submit with his application a statement that his interests, direct and indirect, in Federal geothermal leases do not exceed the acreage limitations prescribed in § 3201.2, together with a statement of his citizenship.

(b) If the applicant is an association or corporation the application must be accompanied by:

(1) A statement showing that it is authorized to hold geothermal leases; (2) a statement that the officer executing the application is authorized to act on behalf of the association or corporation; (3) a statement setting forth the State in which it was incorporated or formed and the names and

addresses of all members or stockholders holding more than 10 percent of the association or corporation; and (4) a statement from each person owning or controlling more than 10 percent of the association or corporation setting forth his citizenship and his holdings.

(c) If the applicant is a municipality, or governmental unit, the application must be accompanied by:

(1) A statement showing that it is authorized to hold geothermal leases; (2) a statement that the officer executing the application is authorized to act on behalf of the municipality or governmental unit, and (3) a copy of its governing body's resolution authorizing such action.

§ 3202.2-2 Guardian or trustee.

(a) *Guardian.* If the application is made by a guardian, he must submit:

(1) A certified copy of the court order authorizing him to act as guardian and in behalf of his ward, to enter into contractual agreements and to fulfill all obligations arising under the lease; and (2) statements as to the citizenship and holdings under the Act of himself and of each person under his guardianship for whom the application is made.

(b) *Trustee.* If the application is made by a trustee, he must submit a copy of the instrument establishing the trust or a certified copy of the court order authorizing him to act as trustee, in behalf of the beneficiary, as to all obligations arising under the lease; and statements as to the citizenship and holdings under the Act of himself and of each beneficiary.

§ 3202.2-3 Attorney-in-fact.

If an application is filed by an attorney-in-fact, it must be accompanied by a statement as to his authority to act.

§ 3202.2-4 Statements previously filed.

Where the statements required by § 3202.2 have been previously filed a reference by serial number to the record in which they have been filed, together with a statement as to any amendments will be accepted.

§ 3202.2-5 Showing as to sole party in interest.

Each application must indicate whether the applicant is the sole party in interest. Where the applicant is not the sole party in interest, separate statements must be signed by each of the parties and by the applicant setting forth the nature of the agreement between them. All interested parties must furnish evidence of their qualifications to hold such lease interest. These separate statements must be filed in the proper BLM office with the application, except as provided in § 3211.2 of this chapter.

§ 3202.2-6 Heirs and devisees (estates).

If an applicant or a successful bidder dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed, and if probate has been completed, or is not required, to the heirs or devisees, provided there is filed in all cases an application to lease in compliance with the requirements of this section which will be effective as of the effective date of the original application filed by the deceased. If there are any minor heirs or devisees, the application can only be made by their legal guardian or trustee in his name. Each such application must be accompanied by the following information:

(a) Where probate of the estate has not been completed:

(1) Evidence that the person who as executor or administrator submits the application, and bond form if a bond is required, has authority to act in that capacity and to sign the application and bond forms.

(2) A statement over the signature of each heir or devisee or, if the heir or devisee is a minor, over the signature of his legal guardian or trustee, concerning citizenship and holdings.

(3) Evidence that the heirs or devisees are the heirs or devisees of the deceased applicant or successful bidder and are the only heirs or devisees of the deceased.

(b) Where the executor or administrator has been discharged or no probate proceedings are required:

(1) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the applicant or successful bidder and the provisions of the law of the deceased's last domicile showing that no probate is required.

(2) A statement over the signature of each of the heirs or devisees with reference to holdings and citizenship. If the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

§ 3202.2-7 Fractional present interests.

(a) An application for a fractional present interest noncompetitive lease must be executed on a form approved by the Director and it must be accompanied by a statement showing the extent of the applicant's ownership of the operating rights to the fractional geothermal resources interest not owned by the United States in each tract covered by the application to lease. Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an application leading to such results will be rejected.

(b) Geothermal resources in lands which have passed from Federal ownership but which lands have been purchased by the Federal Government with a fractional interest in the geothermal resources shall not be developed or produced, except under prescribed terms and conditions and pursuant to any agreement made between the parties of interest prior to the resolution of the question of ownership of the geothermal resources.

Subpart 3203—Leasing Terms

§ 3203.1 Primary and additional term.

§ 3203.1-1 Dating of leases.

All geothermal leases will be dated as of the first day of the month following the date on which the leases are signed on behalf of the lessor except that, where prior written request has been made, a lease may be dated as of the first day of the month within which it is so signed. A renewal lease will be dated from the termination of the original lease.

§ 3203.1-2 Primary term.

All leases shall be for a primary term of 10 years.

§ 3203.1-3 Additional term.

(a) If geothermal steam is produced or utilized in commercial quantities within the primary term of a lease, that lease shall continue for so long thereafter as geothermal steam is produced or utilized in commercial quantities, but the lease shall in no event continue for more than 40 years after the end of the primary term except that the lessee shall have a preferential right to a renewal of his lease for a second 40-year term upon such terms and conditions as the authorized officer deems appropriate, if at the end of the first 40-year term the lands are not needed for another purpose and geothermal steam is produced or utilized in commercial quantities. Production or utilization of geothermal steam in commercial quantities shall be deemed to include the completion of one or more wells producing or capable of producing geothermal steam in commercial quantities and a bona fide sale of such geothermal steam for delivery to or utilization by a facility or facilities not yet installed but scheduled for installation not later than 15 years from the date of commencement of the primary term of the lease.

§ 3203.1-4 Extensions.

(a) A lease which has been extended by reason of production, or on which geothermal steam has been produced, and which has been determined by the Secretary to be incapable of further commercial production and utilization of geothermal steam may be further extended so long as one or more valuable byproducts are produced in commercial quantities but for not more than 5 years.

(b) Where the lessee commenced actual drilling operations prior to the end of the primary term and those operations are being diligently prosecuted at that time, a lease shall be extended for a period of five years and so long thereafter as geothermal steam is produced or utilized in commercial quantities (but for not more than 35 years).

(c) A lease committed to a cooperative plan, communitization agreement or a unit plan under or for which actual drilling operations were commenced prior to the end of the primary term of the lease, shall, if such operations are being diligently prosecuted at that time be extended for a period of five years and so long thereafter as geothermal steam is produced or utilized in commercial quantities (but for not more than thirty five years).

(d) Any lease on which there has been a suspension of operations or productions, or both, under 30 CFR 270.17 shall continue in effect for the life of the suspension and, at the end of the suspension, shall be extended for a period equal to that portion of the primary term during which the suspension was in effect.

(e) If, at the end of 40 years after the conclusion of the primary term steam is being produced or utilized in commercial quantities and the lands are not needed for other purposes, the lessee shall have a preferential right to a renewal of the lease for a second 40-year term on such terms and conditions as the Secretary deems appropriate.

§ 3203.1-5 Segregation of leases on commitment to, or contraction of, cooperative or unit plan or communitization or drilling agreement.

(a) Any lease committed to any cooperative plan, communitization agreement, drilling agreement, or unit plan, which covers lands within and lands outside the area covered by the plan or agreement, shall be segregated, as of the effective date of that plan or agreement, into separate leases, one covering the lands committed to that plan or agreement and the other as to the lands not so committed. The segregated lease covering the portion of the lands not subject to that plan or agreement shall not be entitled to an extension by reason of the segregation, but the term of the lease of such segregated lands shall be as provided in the original lease.

(b) When only part of the land subject to a lease included in a cooperative plan, a communitization agreement, a drilling agreement, or a unit plan is excluded from that plan or agreement because of the contraction of the area subject to that plan or agreement, the part of the lease which is excluded and the part which remains subject to the plan or agreement shall be segregated into separate leases. The term of the segregated lease composed of the excluded land shall not be extended because of production in commercial quantities or the existence of a producible well on the segregated lease remaining subject to the cooperative or unit plan or the communitization or drilling agreement or because actual drilling operations were at the time of contraction being conducted on that other lease, but the term of the lease composed of the excluded land shall be as provided in the original lease.

(c) Where all the land subject to a lease included in a cooperative plan, a communitization agreement, a drilling agreement, or a unit plan is excluded from that plan or agreement because of the contraction of the area subject to that plan or agreement, the term of the lease shall not be extended because of production in commercial quantities or the existence of a producible well on the lands remaining subject to the cooperative or unit plan or the communitization or drilling agreement or because actual drilling operations were being conducted on the other lands, but the term of the lease shall be as provided in the original lease.

(d) Contraction of a unit or cooperative plan or a communitization or drilling agreement causing all or part of the land in the lease to be excluded from such plan or agreement shall not serve to extend the term of such lease excluded by reason of the contraction where the 10-year primary term has already expired.

§ 3203.1-6 Conversion to mineral leases or mining claims.

(a) If the byproducts capable of being produced in commercial quantities are leasable under the Mineral

Leasing Act of February 25, 1920 as amended and supplemented (30 U.S.C. sections 181-287), or under the Mineral Leasing Act for Acquired Lands (30 U.S.C. sections 351-359), and the leasehold is primarily valuable for the production thereof, the lessee shall be entitled to convert his geothermal lease to a mineral lease under and subject to all the terms and conditions of the appropriate act, provided the lands and its resources are available for this purpose, upon application at any time before expiration of the lease extension by reason of byproduct production.

(b) The lessee shall be entitled to locate under the mining laws all minerals which are not leasable and which would constitute a byproduct if commercial production or utilization of geothermal steam continued. The lessee, to acquire the rights herein granted him, shall complete the location of mining claims within 90 days after the termination of the geothermal lease, provided the lands and its resources are available for location.

(c) Any lease converted under paragraph (a) or (b) of this section affecting lands withdrawn or acquired in aid of a function of a Federal department or agency, including the Department of the Interior, shall be subject to such additional terms and conditions as may be prescribed by that department or agency with respect to the additional operations or effects resulting from such conversion upon the utilization of the lands for the purpose for which they are administered.

§ 3203.2 Lease acreage limitation.

(a) A geothermal lease may not embrace more than 2,560 acres in a reasonably compact area, except where a departure is occasioned by an irregular subdivision or subdivisions, entirely within an area of 6 miles square or within an area not exceeding six surveyed or protracted sections in length or width measured in cardinal directions. A lease offer may not exceed 2,560 acres except where the rule of approximation applies.

(b) No lease shall be issued for less than 640 acres, except at the discretion of the Secretary. The Secretary may issue a lease for less than 640 acres where geothermal resources will be utilized for non-electrical purposes, or as provided for in Part 3230 of this chapter with respect to "conversion rights."

(c) Where a departure is occasioned by an irregular subdivision, the leased acreage may be less than 640 acres by an amount which is smaller than the amount by which the area would be more than 640 acres if the irregular subdivision were added.

(d) The authorized officer may add isolated tracts of more or less than 640 acres in nearby sections, to a lease application where it is determined that such addition is necessary for the proper management of the resource, provided the additional lands will not cause the lessee to exceed the maximum acreage limitation as provided in § 3201.2(a) of this chapter. However, prior to the issuance of such a lease based on the application as amended by the authorized officer, the applicant shall be given the option to refuse such a lease. Failure of the applicant to execute and return the lease within 30 days after receipt thereof will constitute a withdrawal of the application, as amended, without further notice.

[44 FR 12038, Mar. 5, 1979]

§ 3203.3 Consolidation of leases.

Two or more contiguous leases issued to the same lessee may be consolidated if the total combined acreage does not exceed 2,560 acres. Except where a deacreage is caused by an irregular subdivision or subdivisions as stated in § 3203.2.

§ 3203.4 Description of lands.

Applications and nominations shall include a description of the lands sought to be included in a geothermal lease.

(a) *Surveyed lands.* If the lands have been surveyed under the public land rectangular system, each application or nomination shall describe the lands by legal subdivision, section, township, and range.

(b) *Unsurveyed lands.* If the lands have not been so surveyed, each application shall describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys or to a prominent topographic feature. In Alaska the description of unsurveyed lands must be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by any agency of the United States (such as the U.S. Geological Survey, the Coast and Geodetic Survey, or the International Boundary Commission), if the record position thereof is available to the general public.

(c) *Protracted surveys.* When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, each application or nomination for lands shown on such protracted surveys, filed on or after such effective date, shall describe the lands according to the legal subdivision, section, township, and range shown on the approved protracted surveys.

(d) *Unsurveyed public lands adjacent to tidal waters in southern Louisiana and in Alaska.* In lease applications embracing unsurveyed public lands adjacent to tidal waters in southern Louisiana and in Alaska, if the applicant finds it impracticable to furnish a metes and bounds description, as required in paragraph (b) of this section with respect to the water boundary, he may, at his option, extend the boundary of his application into the water a distance sufficient to permit complete enclosure of the water boundary of his application by a series of courses and distances in cardinal directions (the object being to eliminate the necessity of describing the meanders of the water boundary of the public lands included in the application). The description in the lease application shall in all other respects conform to the requirements of paragraph (b) of this section. Such description would not be deemed for any purpose to describe the true water boundaries of the lease, such boundaries in all cases being the ordinary high water mark of the navigable waters. The land boundaries of such overall area shall include only the public lands embraced in the application. The applicant shall agree to pay rental on the full acreage included within the description with the understanding that rights under any lease to be issued on that application will apply only to the areas within that description properly subject to lease under the act, but that the total area described will be considered as the lease acreage for purposes of rental payments, acreage limitations under § 3201.2 of this chapter and the maximum or minimum area to be included in a lease pursuant to § 3203.2. The tract should be shown in outline on a current quadrangle sheet published by the U.S. Geological Survey or such other map as will adequately identify the lands described.

§ 3203.5 Diligent exploration.

Each geothermal lease will include provisions for the diligent exploration of the leased resources until there is production in commercial quantities applicable to the lands subject to the lease, and failure to perform such exploration may subject the lease to termination. Diligent exploration means exploration operations (subsequent to the issuance of the lease) on, or related to the leased lands, including, but not limited to, operations such as geochemical surveys, heat flow measurements, core drilling, or drilling of a test well. Exploration operations, in order to qualify as diligent exploration, must be approved by the Supervisor, and evidence of all expenditures therefor and the results thereof must be submitted annually to the Supervisor in compliance with applicable regulations and Geothermal Resources Operational (GRO) Orders or upon his request. Moreover, after the fifth year of the primary lease term, exploration operations, to qualify as diligent exploration for a year, must entail expenditures during that year equal to at least two times the sum of (a) the minimum annual rental required by statute, and (b) the amount of rental for that year in excess of the fifth year's rental, but in no event shall the required expenditures exceed twice the rental for the 10th year.

However, any expenditures for diligent operations during the first 5 years of the lease and any expenditures for diligent operations during any subsequent year in excess of the minimum required expenditures for that year may be credited, in such proportions as the lessee may designate, against (1) expenditures needed to qualify exploration operations as diligent operations for future years, or (2) any rental requirement for that or any future years in excess of the fifth year's rental pursuant to § 3205.3-3 of this chapter. In all cases, the lessee must pay the basic annual rental specified in the lease for the initial five years of the primary term until there is production of geothermal steam in commercial quantities on the leased lands.

§ 3203.6 Plans of development and operation.

No entry upon the leased lands for purposes other than casual use as defined in § 3209.0-5(d) of this chapter will be permitted until either a notice of intent or a plan of operation has been approved.

(a) The lessee shall submit a notice of intent in accordance with 30 CFR 270.78 prior to entry upon the lands for purposes of conducting exploration operations as defined in § 3209.0-5 of this chapter.

(b) The lessee shall submit a plan of operation pursuant to 30 CFR 270.34, prior to entry upon the leased lands for purposes of drilling exploratory and development wells, including construction of testing and production facilities, except as provided in paragraph (a) of this section. Subsequent well operations shall be conducted under a modified or amended plan of operations as provided in 30 CFR 270.35.

[44 FR 12038, Mar. 5, 1979]

Subpart 3204—Surface Management Requirements; Special Requirements

§ 3204.1 General.

A lessee shall comply with and be bound by the following general terms and conditions, the specific requirements contained in the lease stipulations and any GRO orders that may be issued pursuant to 30 CFR 270.11. Assuring compliance with the requirements of this section is the responsibility of the Supervisor as to the lands within the area of operations and is the responsibility of the appropriate land management agency as to the remaining lands in the lease.

(a) *Equal employment opportunity.* The lessee shall comply with Executive Order 11246, as amended, 30 FR 12319 (1965), and regulations issued pursuant thereto, 41 CFR Chapter 60 and 43 CFR Part 17.

(b) *Public access.* (1) The lessee shall permit free and unrestricted public access to and upon the leased lands for all lawful and proper purposes except in areas where such access would unduly interfere with operations under the lease or would constitute a hazard to health and safety. Restrictions on access will not be allowed without prior approval.

(2) During construction, the lessee shall regulate public access and vehicular traffic to protect the public, wildlife, and livestock from hazards associated with the project. For this purpose, the lessee shall provide warnings, fencing, flag men, barricades, and other safety measures as appropriate.

(c) *Pollution abatement.* The lessee shall comply with all Federal and State standards and all applicable local standards with respect to the control of all forms of air, land, water, and noise pollution, including, but not limited to, the control of erosion and the disposal of liquid, solid, and gaseous wastes. The Supervisor may, in his discretion, establish additional and more stringent standards, and, if he does so, the lessee shall comply with those standards. The lessee, in addition to any other action required by those standards, shall take the following specific actions:

(1) *Pesticides and herbicides.* The lessee shall comply with all rules issued by the Department of the Interior and the Environmental Protection Agency pertaining to the use of poisonous substances on public lands.

(2) *Water pollution.* The lessee shall conduct lease operations and maintenance in accordance with Federal and State water quality standards and

public health and safety standards, and applicable local water quality standards and public health and safety standards. Toxic materials shall not be released into any surface waters or underground waters. Reinjection of waste geothermal fluids into geothermal or other suitable aquifers will be permitted upon approval of the lessee's plan of operation submitted pursuant to 30 CFR 270.34.

(3) *Air pollution.* The lessee shall control emissions from operations in accordance with Federal and State air quality standards, and applicable local air quality standards.

(4) *Erosion control.* The lessee shall minimize disturbance to vegetation, drainage channels, and streambanks. The lessee shall employ such soil and resource conservation and protection measures on the leased lands as the Supervisor deems necessary.

(5) *Noise control.* The lessee shall control noise emissions from operations in accordance with Federal and State noise emission standards, and applicable local noise emission standards.

(d) *Sanitation and waste disposal.* The lessee shall remove or dispose of all waste material generated in connection with the exploration, development, production and transportation operations in a manner set forth in the approved plan of operation submitted pursuant to 30 CFR 270.34.

(e) *Land subsidence, seismic activity.* The lessee shall take precautions necessary to minimize land subsidence or seismic activity which could result from production of geothermal resources and the disposal of waste fluid where such activity could damage or curtail the use of the geothermal resources or other resources, or other uses of the land and take such measures as stipulated to:

(1) Monitor operations for land subsidence and for seismic activity; and (2) maintain, and when requested, make available to the lessor, records of all monitoring activities.

(f) *Aesthetics.* The lessee shall take aesthetics into account in the planning, design, and construction of facilities on the leased premises.

(g) *Fish and wildlife.* The lessee shall employ such measures as are deemed necessary to protect fish and wildlife and their habitat.

(h) *Antiquities and historical sites.* The lessee shall conduct activities on discovered, known or suspected archeological, paleontological, or historical sites in accordance with lease terms or specific instructions.

(i) *Restoration.* The lessee shall provide for the restoration of all disturbed lands in an approved manner.

(j) *Annual reports.* The lessee shall submit annual reports to the authorized officer on compliance with the requirements of paragraphs (b) through (i) of this section and report within 24 hours, and if the report is oral, shall confirm the report in writing within 30 days, any significant environmental damage suffered by the lands subject to his lease. However, if, after drilling operations have begun, the lessee is required to submit a similar report under 30 CFR 270.30 and 270.76, he may fulfill the requirement of this subsection by submitting to the authorized officer a copy of that report.

§ 3204.2 Waste prevention.

All leases shall be subject to the condition that the lessee will, in conducting his exploration, development, and producing operations, use all reasonable precautions to prevent waste of geothermal resources and other natural resources found or developed in the leased lands.

§ 3204.3 Readjustment of terms and conditions.

(a) (1) Except as otherwise provided by law, the terms and conditions of any geothermal lease may be readjusted as determined by the authorized officer at not less than 10-year intervals beginning 10 years after the date the geothermal resource is produced and utilized commercially for any purpose including the generation of electricity.

(2) At such time as the geothermal resource is being commercially produced, the authorized officer shall give notice to the lessee, by written decision, of any proposed readjustment of the terms and conditions of the lease and the nature thereof, and unless the lessee files with the authorized officer an objection to the pro-

posed terms and conditions or relinquishes the lease within 30 days after receipt of such notice, the lessee shall be deemed conclusively to have agreed to such terms and conditions. If the lessee files objections, and agreement cannot be reached between the authorized officer and the lessee within a period of 60 days, the lease may be terminated by either party, subject to the provisions of § 3000.4 of this chapter. If the lessee files objections to the proposed readjusted terms and conditions, the existing terms and conditions will remain in effect until there has been an agreement between the authorized officer and the lessee on the new terms and conditions to be applied to the lease or until the lease is terminated. The readjustment of any terms concerning rental and royalty rates will be subject to § 3205.3 of this chapter.

(b) Any readjustment of the terms and conditions of any lease of lands withdrawn or acquired in aid of a function of a Federal department or agency may be made only with the approval of that other agency.

[44 FR 12038, Mar. 5, 1979]

§ 3204.4 Reservation to the United States of oil, hydrocarbon gas, and helium.

The United States reserves the ownership of and the right to extract oil, hydrocarbon gas, and helium from all geothermal steam and associated geothermal resources produced from lands leased under the Act. Whenever the right to extract oil, hydrocarbon gas, and helium, from geothermal steam and associated geothermal resources produced from such lands is exercised, it shall be exercised so as to cause no substantial interference with the production of geothermal resources from such lands.

§ 3204.5 Compensation for drainage; compensatory royalty.

(a) Upon a determination by the Supervisor that lands owned by the United States are being drained of geothermal resources by wells drilled on adjacent or cornering lands, the authorized officer may execute agreements with the owners of adjacent or cornering lands whereby the United States, or the United States and its lessees, shall be compensated for such drainage, such agreements to be made with the consent of any lessee affected thereby. The precise nature of any agreement will depend on the conditions and circumstances involved in the particular case.

(b) Where land in any lease is being drained of its geothermal resources by a well either on a Federal lease issued at a lower rate of royalty or on land not the property of the United States, the lessee must drill and produce all wells necessary to protect the leased lands from drainage. In lieu of drilling such wells, the lessee may, with the consent of the Supervisor, pay compensatory royalty in the amount determined in accordance with 30 CFR Part 270.

§ 3204.6 Patented lands.

The terms and conditions of any geothermal resource lease for lands conveyed by the United States subject to a reservation to the United States of geothermal resources may be readjusted upon notification to the surface owner.

Subpart 3205—Service Charges, Rentals and Royalties

§ 3205.1 Payments.

§ 3205.1-1 Form of remittance.

Remittances required under these regulations may be made by cash payment, check, certified check, bank draft, bank cashier's check, or money order. All remittances will be deposited as received.

§ 3205.1-2 Where submitted.

(a) *Rentals on nonproducing leases.* Rentals under all nonproducing leases issued shall be paid at the proper BLM office. All remittances to the Bureau of Land Management shall be made payable to the Bureau of Land Management.

(b) *Other payments.* All royalties on producing leases, communitized leases in producing well units, unitized leases in producing unit areas, leases on which compensatory royalty is payable and all royalty payments under easements for directional drilling are to be paid to the Supervisor. All remittances to the Supervisor shall be made payable to the U.S. Geological Survey.

§ 3205.2 Service charges.

(a) *Competitive lease applications.* No service charge is required.

(b) *Noncompetitive lease applications.* Applications for noncompetitive leases must be accompanied by a nonrefundable service charge of $50 for each application.

(c) *Assignments.* Applications for approval of an assignment of a lease or interest therein must be accompanied by a nonrefundable service charge of $50 for each application.

(d) *Nominations.* No service charge is required.

§ 3205.3 Rentals and royalties.

§ 3205.3-1 Payment with application.

Each application, except an application filed pursuant to Subpart 3211 of this chapter, of this part, must be accompanied by payment of the first year's rental of $1 per acre or fraction thereof based on the total acreage included in the application. An application accompanied by a payment of the first year's rental which is deficient by not more than 10 percent will be approved by the authorized officer provided all other requirements are met, but, if the additional rental is not paid within 30 days from notice, the application or the lease, if issued, will be canceled. If the annual rental rate established for the lease to be issued is more than $1 per acre or required to submit the additional rental fraction thereof, the applicant will be prior to issuance of the lease upon notice from the authorized officer.

§ 3205.3-2 Payment of annual rental.

(a) Annual rental in the amount specified in the lease which shall be not less than $1 per acre or fraction thereof must be paid in advance and must be received by the proper BLM office on or before the anniversary date of the lease. If there is no well on the leased lands capable of producing geothermal resources in commercial quantities, the failure to pay rental on or before the anniversary date shall terminate the lease by operation of law, except as provided by § 3244.2 of this chapter.

(b) If, on the anniversary date of the lease, less than a full year remains in the lease term, the rentals shall be payable in the same proportion as the period remaining in the lease term is to a full year. The rentals shall be prorated on a monthly basis for the full months, and on a daily basis for the fractional month remaining in the lease term. For the purpose of prorating rentals for a fractional month, each month will be deemed to consist of 30 days.

(c) If the term of a lease for which prorated rentals have been paid is further extended to or beyond the next anniversary date of the lease, rentals for the balance of the lease year shall be due and payable on the 1st day of the first month following the date through which the prorated rentals were paid. If the rentals are not paid for the balance of the lease year, the lease will be subject to cancellation. However, if the anniversary date occurs before the end of the notice period, the rental for the following lease year shall nevertheless be due on the anniversary date and failure to pay the full rental for that year on or before that date shall cause the lease to terminate automatically by operation of law except as provided by § 3244.2 of this chapter. The lessee shall not be relieved of liability for rental due for the balance of the previous lease year.

(d) If the payment is due on a day in which the proper BLM office to receive payment is not open, payment received on the next official working day will be deemed to be timely.

§ 3205.3-3 Escalating rental rates.

To encourage the orderly and timely development of geothermal leases, all leases issued pursuant to the regulations in this Group will provide that, beginning with the sixth year and for each year thereafter until the lease year beginning on or after the commencement of production of geothermal resources in commercial quantities, the rental will be set by the authorized officer as the amount of rental for the preceding year plus an additional rental of $1 per acre, or fraction thereof, but the authorized officer may, upon a showing of sufficient justification by the lessee, waive the payment of all or any portion of the additional rental.

§ 3205.3-4 Fractional interest.

Rentals, minimum royalties, and royalties payable for lands in which the United States owns an undivided fractional interest shall be in the same proportion to the rentals, minimum royalties, and royalties provided for in § 3205.3, as the undivided fractional interest of the United States in the geothermal resources is to the full geothermal resources interest.

§ 3205.3-5 Royalty on production.

Royalty shall be paid at the following rates on geothermal resources:

(a) A rate, as set forth in the lease, of not less than 10 per centum and not more than 15 per centum of the amount or value of steam, or any other form of heat or energy derived from production under the lease and sold or utilized by the lessee or reasonably susceptible to sale or utilization by the lessee; (b) a rate as set forth in the lease, of not more than 5 per centum of any byproduct derived from production under the lease and sold or utilized or reasonably susceptible of sale or utilization by the lessee, except that as to any byproduct which is a mineral named in section 1 of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181), the rate of royalty for such mineral shall be the same as that provided in that Act and the maximum rate of royalty for such mineral shall not exceed the maximum royalty applicable under that Act; (c) in no event shall the royalty on any producing lease for any lease year, commencing with the lease year beginning on or after the commencement of production in commercial quantities, be less than $2 per acre or fraction thereof, and this minimum royalty, in lieu of rental, shall be payable at the expiration of each lease year.

§ 3205.3-6 Royalty on commercially demineralized water.

All geothermal leases issued pursuant to the provisions of this group shall provide for the payment to the lessor of a royalty on commercially demineralized water at a rate to be specified in the lease of not more than 5 per centum of the value of such commercially demineralized water that has been sold or utilized by the lessee or is reasonably susceptible of sale or utilization by the lessee, except that no payment of a royalty will be required on such water if it is used in plant operation for cooling or in the generation of electric energy or otherwise.

§ 3205.3-7 Waiver, suspension or reduction of rental or royalty.

(a) The authorized officer may waive, suspend, or reduce the rental or royalty for any lease or portion thereof in the interests of conservation and to encourage the greatest ultimate recovery of geothermal resources if he determines that this is necessary to promote development or that the lease cannot be successfully operated under the lease terms. No waiver, suspension or reduction of rental or royalty will be granted where the only reason for the request for such relief is the unavailability of power generating facilities to utilize the geothermal steam.

(b) An application hereunder shall be filed in triplicate with the Supervisor, and must:

(1) Contain the serial number of the leases and the names of the lessee and operator; (2) show the number, location, and status of each well that has been drilled, a tabulated statement for each month covering a period of not less than 6 months prior to the date of filing the application of the aggregate amount of production subject to royalty computed in accordance with the operating regulations, the number of wells counted as producing each month, and the average production per well per day; (3) contain a detailed statement of expenses and costs of operating the lease, the income from the sale of any leased products and all facts tending to show whether the wells can be successfully operated

using the royalty or rental fixed in the lease; and (4) where the application is for a reduction in royalty, furnish full information as to whether royalties or payments out of production are paid to others than to the United States, the amounts so paid, and the efforts made to reduce them. The applicant must also file agreements of the holders to a comparable reduction of all other royalties from the leasehold to an aggregate not in excess of one-half the Government royalties.

§ 3205.3-8 Application for and effect of suspension of operations and production.

(a) Applications by lessees for suspensions of operations or production, or both, under a producing geothermal lease (or for relief from any drilling or producing requirements of such a lease) shall be filed in triplicate with the Supervisor, who is authorized to act on applications filed pursuant to this section and to terminate suspensions which have been or may be granted. Complete information must be furnished showing the necessity of the relief sought.

(b) A suspension shall take effect as of the time specified in the order of the Supervisor. Rental or minimum royalty payments will be suspended during any period of suspension of all operations and production directed, or assented to, by the Supervisor, beginning with the first day of the lease month in which the suspension of operations and production becomes effective or, if the suspension of operations and production becomes effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. The suspension of rental or minimum royalty payments shall end on the first day of the lease month in which operations or production is resumed. Where rentals are creditable against royalties and have been paid in advance, proper credit will be allowed on the next rental or royalty due under the lease.

(c) No lease shall be deemed to expire by reason of a suspension of either operations or production, pursuant to any order or assent of the Supervisor.

(d) If there is a well on the leased premises capable of producing geothermal resources and all operations and production are suspended pursuant to any order of the Supervisor, approval of recommencement of drilling operations will terminate the suspension as to operations but not as to production, and will terminate both the period of suspension of rental and minimum royalty payments provided in paragraph (b) of this section and the period of suspension for which an equivalent extension will be granted. However, as provided in paragraph (c) of this section, the lease will not be deemed to expire so long as the suspension of operations or production remains in effect.

(e) The relief authorized under this section may also be obtained for any leases included within an approved unit or cooperative plan of development and operation.

(f) See 30 CFR 270.17 for regulations concerning action of the Supervisor on applications filed pursuant to this section.

§ 3205.3-9 Readjustments.

The rentals and royalties of any geothermal lease may be readjusted at not less than 20-year intervals beginning 35 years after the date geothermal steam is produced as determined by the Supervisor. In the event of any such readjustment neither the rental nor royalty paid during the preceding period shall be increased by more than 50 per centum, and in no event shall the royalty payable exceed 22½ per centum. Each geothermal lease shall provide for such readjustment. The Supervisor will give notice of any proposed readjustment of rental or royalties. Unless the lessee relinquishes the lease within 30 days after receipt of such notice, he shall conclusively be deemed to have agreed to such terms and conditions. If the lessee files a protest, and no agreement can be reached between the authorized officer and the lessee within a period of 60 days, the lease may be terminated by either party, subject to the provisions of § 3000.4 of this chapter. If the lessee files a protest to the proposed readjusted terms and conditions, the existing terms and conditions will remain in effect until there has been an agreement between the authorized officer and the lessee on the new terms and conditions to be applied to the lease or until the lease is terminated, except payments of any proposed readjusted rentals and royalties must be paid in the timely manner prescribed in these regulations and may be paid under protest. The readjusted terms and conditions will be effective as of the end of the term being adjusted.

§ 3205.4 Rental and minimum royalty liability of lands committed to cooperative or unit plans.

§ 3205.4-1 Prior to production.

All lands within any lease committed to an approved cooperative or unit plan shall at all times prior to production on any of the lands so committed remain subject to rental in accordance with § 3205.3.

§ 3205.4-2 After production.

As soon as production is obtained on or for any lands included in an approved cooperative or unit plan those lands which are included within the participating area of the producing well shall become liable for royalties in accordance with Subpart 3205. All other unitized lands, shall remain subject to rental in accordance with § 3205.3.

Subpart 3206—Lease Bonds

§ 3206.1 Types of bonds and filing.

§ 3206.1-1 Types of bonds.

(a) Bonds shall be either corporate surety bonds or personal bonds except that bonds with individual sureties may be furnished for the protection of the entryman or owner of the surface rights.

(b) Lease compliance bond. The lessee must furnish, prior to entry on the leased lands, and thereafter maintain a bond of not less than $10,000 conditioned on compliance with all the terms of the lease.

(c) Protection bond. A lessee will be required, prior to entry on the leased lands, to furnish and maintain a bond of not less than $5,000 for indemnification for all damages occasioned to persons or property as the result of lease operations.

[38 FR 35082, Dec. 21, 1973, as amended at 41 FR 23386, June 6, 1976]

§ 3206.1-2 Filing of bonds.

A single original copy of the bond on forms approved by the Director must be filed in the proper BLM office as required and directed by the authorized officer. For unit bond forms see 30 CFR Part 271.

[41 FR 23387, June 6, 1976]

§ 3206.2 Termination of period of liability.

The period of liability of any bond will not be terminated until all lease terms and conditions have been fulfilled.

§ 3206.3 Operator's bond.

§ 3206.3-1 Compliance.

An operator, or, if there are more than one for different portions of the lease, each operator may furnish a general lease bond of not less than $10,000 in his own name as principal on the bond in lieu of the lessee. Where there is more than operator's bond affecting a single lease, each such bond must be conditioned upon compliance with all lease terms for the entire leasehold.

§ 3206.3-2 Approval.

An operator's bond will not be accepted unless the operator holds an operating agreement which has been approved by the Department or has pending an operating agreement in proper condition for approval. The more designation as operator will not suffice.

§ 3206.3-3 Default.

Where a bond is furnished by an operator, suit may be brought thereon without joining the lessee if he is not a party to the bond.

§ 3206.4 Personal bond or corporate bond.

§ 3206.4-1 Amount.

In lieu of a surety bond, a personal bond in a like amount may be given by the obligor with the deposit as security therefor of negotiable bonds of the United States of a par value equal to the amount specified in the bond.

§ 3206.1-2 Deposit of securities.

Personal bonds must be accompanied by a deposit of negotiable Federal securities in a sum equal at their par value to the amount of the bond and by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the conditions of the lease bond.

§ 3206.1-3 Qualified corporate sureties.

Treasury lists: A list of companies holding certificates of authority from the Secretary of the Treasury under the Act of July 30, 1947 (6 U.S.C. 6-13), as acceptable sureties on Federal bonds is published in the FEDERAL REGISTER annually.

§ 3206.5 Nationwide bond.

In lieu of bonds required under any of the preceding paragraphs, the holder of leases or of operating agreements approved by the Department or holder of operating rights by virtue of being designated operator or agent by the lessee pending departmental approval of operating agreements may furnish a bond the amount of which must be not less than $150,000 for full nationwide coverage for all geothermal leases.

§ 3206.6 Statewide bond.

In lieu of any of the bonds required by the preceding paragraphs, the holder of leases or of operating agreements approved by the Department or holder of operating rights by virtue of being designated operator or agent by the lessee pending Departmental approval of operating agreements, may furnish a statewide bond, applicable to the State in which the leases are situated, the amount of which must be not less than $50,000

§ 3206.7 Default.

§ 3206.7-1 Payment by surety.

Where upon a default the surety makes payment to the Government of any indebtedness due under a lease, the face amount of the surety bond and the surety's liability thereunder shall be reduced by the amount of such payment.

§ 3206.7-2 Penalty.

Thereafter, upon penalty of cancellation of all of the leases covered by that bond, the principal shall post a new nationwide bond in the amount of $150,000 or a new statewide bond in the amount of $50,000 as the case may be, within 6 months after notice, or within such shorter period as the authorized officer may fix. However, in lieu thereof, the principal may within that time file separate bonds for each lease.

§ 3206.8 Applicability of provisions to existing bonds.

The provisions of these regulations may be made applicable to any oil and gas nationwide or statewide bond in force at the effective date of these regulations by filing in the proper BLM office a written consent to that effect and an agreement to be bound by the provisions hereof executed by the principal and the surety. Upon receipt thereof the bond will be deemed to be subject to the provisions of these regulations.

Subparts 3207-3208—[Reserved]

Subpart 3209—Geothermal Resources Exploration Operations

§ 3209.0-1 Purposes.

(a) The regulations in this subpart establish procedures to be followed in conducting exploration operations on the public land for geothermal resources. The regulations in this subpart are not applicable to exploration operations conducted pursuant to a geothermal resources lease.

(b) The rights obtained under this subpart do not include an exclusive right to prospect for geothermal resources on the land described in a Notice of Intent or any preference right to a geothermal resources lease.

§ 3209.0-2 Objectives.

The regulations in this subpart encourage exploration of the public lands for geothermal resources in a manner that is consistent with the management policy set forth in § 1725.3 of this chapter. No exploration operations will be allowed if the authorized officer determines that such operations would be inconsistent with that policy. The authorized officer may suspend or terminate exploration operations upon due notice to the operator at any time if he determines that there is non-compliance with the terms and conditions of the Notice of Intent.

§ 3209.0-5 Definitions.

As used in this subpart:

(a) "Exploration operations" means any activity relating to the search for evidence of geothermal resources which requires physical presence upon public lands and which may result in damage to public lands or resources thereon. It includes, but is not limited to, geophysical operations, drilling of shallow temperature gradient wells, construction of roads and trails, and cross-country transit by vehicle over public lands. It does not include the casual use of public lands for geothermal resources exploration. It does not include core drilling for subsurface geologic information, except drilling of shallow temperature gradient wells, or drilling for geothermal resources; these activities will be authorized only by the issuance of a geothermal resources lease. The regulations in this Subpart, however, are not intended to prevent drilling operations necessary for placing explosive charges for seismic exploration, nor do they affect the exclusive right of a lessee to drill for geothermal resources upon the land subject to his lease.

(b) "Notice of Intent" means a "Notice of Intent and Permit to Conduct Exploration Operations (Geothermal Resources)."

(c) "Public lands" means lands owned by the United States and administered by the Bureau of Land Management. It does not include a retained mineral interest in lands, title to which has passed from the United States.

(d) "Casual use" means activities that involve practices which do not ordinarily lead to any appreciable disturbance or damage to lands, resources, and improvements. For example, activities which do not involve use of heavy equipment or explosives and which do not involve vehicle movement except over established roads and trails are "casual use."

§ 3209.1 Notice of intent and permit to conduct exploration operations (Geothermal resources).

§ 3209.1-1 Application.

(a) *Forms and where filed.* Any persons desiring to conduct exploration operations under the regulations of this subpart shall, prior to entry upon the lands, file for approval with the authorized officer for the district in which the public lands are located a Notice of Intent on a form approved by the Director.

(b) *Requirements.* The Notice of Intent will contain the following:

(1) The name and address, including zip code, both of the person, association, or corporation for whom the operations will be conducted and of the person who will be in charge of the actual exploration activities;

(2) A statement that the signers agree that exploration operations will be conducted pursuant to the terms and conditions listed on the approved form;

(3) A brief description of the type of operations which will be undertaken;

(4) A description of the lands to be explored by township;

(5) A map or maps, available from state or Federal sources, showing the lands to be entered or disturbed by the proposed exploration operations; and

(6) The approximate dates of the commencement and termination of exploration operations.

§ 3209.1-2 Review of Notice of Intent.

The authorized officer will either approve or disapprove a Notice of Intent as promptly as practicable, but in any event within 30 calendar days after the date of the filing of the Notice of Intent. If the authorized officer shall disapprove a Notice of Intent, he shall explain in writing to the applicant the reasons for disapproval.

§ 3209.2 **Exploration operations.**

No exploration operations will be conducted on public lands except pursuant to the terms of a Notice of Intent which has been approved by the authorized officer.

§ 3209.3 **Completion of operations.**

Upon completion of the exploratory operations, there shall be filed with the authorized officer a "Notice of Completion of Exploration Operations." Within 90 days after the filing of such "Notice of Completion," the authorized officer shall notify the party who had conducted compliance with all of the terms and conditions set out by the regulations in this subpart and in the Notice of Intent, or whether any additional measures must be taken to rectify any damage to the land, specifying the nature and extent thereof.

§ 3209.4 **Bond requirement.**

§ 3209.4-1 **General.**

(a) Simultaneously with the filing of the Notice of Intent, and before the entry is made on the land, the party or parties filing the Notice of Intent must file with the authorized officer a surety company bond for each exploration operation in the amount of not less than $5,000, conditioned upon the full and faithful compliance with all of the terms and conditions of the regulations in this Subpart and of that Notice of Intent.

(b) A party will be excused from compliance with the requirements of paragraph (a) of this section if he possesses either a nationwide bond in the amount of not less than $50,000 covering all exploration operations or a statewise bond in the amount of not less than $25,000 covering all exploration operations in the State in which the lands on which he has filed the Notice of Intent are situated.

§ 3209.4-2 **Riders to existing bond forms.**

Holders of nationwide and statewide oil and gas exploration bonds shall be permitted, in lieu of furnishing additional bonds, to amend their bonds to include geothermal resources exploration operations.

§ 3209.4-3 **Termination of period of liability.**

The authorized officer will not give his consent to the cancellation of the bond if an individual bond was submitted or to the termination of the period of liability if a State or nationwide bond was submitted, unless and until there has been compliance with all of the terms and conditions of the Notice of Intent. Should the authorized officer fail to notify the party within 90 days from the filing of "Notice of Completion" that all terms and conditions have been complied with or that additional corrective measures must be taken to rehabilitate the land, the period of liability under an individual bond or the period of liability for a particular exploration operation under a State or nationwide bond shall automatically terminate on the 91st day.

PART 3210—NONCOMPETITIVE LEASES

Subpart 3210—Noncompetitive Leases; General

Sec.

3210.1 Availability of land.
3210.2-1 Application.
3210.2-2 Submission of applications.
3210.2-3 Withdrawal of application.
3210.2-4 Amendment to lease.
3210.3 Determination of priorities.
3210.4 Rejections.

Subpart 3211—Bureau Motion, Land Previously Leased for Geothermal Resources

3211.1 Releasing of formerly leased lands.
3211.2 Applications during simultaneous filing periods.
3211.3 Insurance of leases for unit on posted list.

AUTHORITY: 84 Stat. 1566, 30 U.S.C. 1001-1025.

SOURCE: 38 FR 35093, Dec. 21, 1973, unless otherwise noted.

Subpart 3210—Noncompetitive Leases; General

§ 3210.1 **Availability of land.**

(a) Applications to lease, except for those filed pursuant to Part 3230, of this chapter, filed prior to the effective date of these regulations are unacceptable and will be returned summarily without earning any priority.

(b) Lands and deposits subject to disposition under this part which are not within any KGRA will be available for leasing after the effective date of these regulations. Lands which are available for noncompetitive leasing and which were included in cancelled, relinquished, expired, or terminated leases shall be available for leasing only subject to the provisions of Subpart 3211 of this chapter. All other lands available for noncompetitive leasing will be available for leasing only subject to the provisions of this Subpart. All applications to lease the same lands which are filed between the effective date of these regulations and 30 days following that time will be considered to have been filed simultaneously, and the respective priority of the various applications will be determined by a public drawing. In other respects the first 30 days after the effective date of these regulations shall be treated as an application filing period as provided in § 3210.2-2.

§ 3210.2-1 Application.

An application for a lease must be filed on a form approved by the Director in the proper BLM office in duplicate for public lands and in triplicate where acquired lands are involved. The application must be submitted in a sealed envelope marked "Application for lease pursuant to 43 CFR Part 3210". An application will be considered filed when it is received in the proper office during business hours. The application must include the following:

(a) The applicant's name and address;

(b) A statement of applicant's citizenship and qualifications;

(c) A complete and accurate description of the lands applied for, which must include all available lands, including reserved geothermal resources, within a surveyed or protracted section, or, if the lands are neither surveyed or protracted and are descriped by metes and bounds, all the lands which will be included in a section when the lands are surveyed or protracted;

(d) A proposed plan which shall include:

(1) A map, or maps, available from State or Federal sources, showing the topography of the land applied for, on which the applicant shall show drainage patterns, present road and trail locations, present utility systems, proposed road and trail location, proposed well locations and potential surface disturbance, and

(2) A narrative statement setting forth his proposed plan and methods for diligent exploration. Such plan shall provide for a program of diligent exploration as defined in § 3203.5 of this chapter.

(i) The narrative statement shall also describe the measures proposed to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, air and noise pollution and hazards to public health and safety during lease activities. However, the proposed plan required by this paragraph need not be submitted with the application during the initial 30-day simultaneous filing period provided by § 3210.1(b) or during any application filing period pursuant to § 3210.2-2, but must be filed prior to the issuance of the lease, upon notice from the authorized officer; and

(e) A statement that the applicant does not hold, own, or control any interest, direct or indirect, in other Federal geothermal leases in the same State in excess of 20.480 acres.

§ 3210.2-2 Submission of applications.

Except for applications filed during the first 30 days after the effective date of these regulations, applications for leases pursuant to this subpart shall submitted only during application filing periods. An application filing period shall begin on the first working day of each calendar month and shall end at the close of business on the last working day of that month. The first application filing period shall begin on the first working day of the month following the conclusion of the initial 30 day filing period provided in § 3210.1(b). No applicant shall file during the same application filing period a second application which overlaps any of the land covered by his first application. When an application is filed with the authorized officer, the date of filing shall be stamped on the envelope. The envelope containing the application shall remain sealed until the end of the application filing period during which the application is filed. On the first working day following the end of the application filing period all applications shall be opened, and it will be determined which applications are for lands included in a KGRA. In determining whether land included in an application is a KGRA because of competitive interest, no application submitted during any subsequent application filing period will be considered. Applications for land determined to be KGRA will be rejected. All other applications will be assigned priority according to the date of filing. If any application covers both land within a KGRA and land outside a KGRA, the applicant will be granted the opportunity to amend his application to exclude the portion included in a KGRA, and his amended application will be assigned priority according to the date of filing of his original application, but must comply with all other requirements of these regulations.

§ 3210.2-3 Withdrawal of application.

An application may not be withdrawn, either in whole or in part, unless the request is received by the proper BLM office before the lease or an amendment of the lease, whichever covers the land described in the withdrawal, has been signed on behalf of the United States even though the effective date of the lease is subsequent to the date of filing of the withdrawal, except where a separate conflicting lease has been signed on behalf of the United States covering the land described in the withdrawal.

§ 3210.2-4 Amendment to lease.

If any of the land applied for was open to filing when the application was filed but is omitted from the lease for any reason and thereafter becomes available for noncompetitive leasing, the original lease will be amended to include the omitted land unless, before the issuance of the amendment, the proper BLM office receives a withdrawal of the lessee's application with respect to such land or such omitted lands have been determined to be within a KGRA. The lease term for the land added by such an amendment shall be the same as if the land had been included in the original lease when it was issued.

§ 3210.3 Determination of priorities.

(a) No lease shall be issued before final action has been taken on (1) any prior application to lease the land, (2) any subsequent application to lease the land that is based upon a claimed preferential right, and (3) any petition for the renewal or reinstatement of an existing or former lease on the land.

(b) Where a lease is issued before final action has been taken on such applications and petitions, it shall be canceled, and the advance rental returned, after due notice to the lessee, where the applicant or petitioner is found to be qualified and entitled to receive a lease of the land.

(c) Applications for lease received in the mail or delivered on the same day will be deemed to have been simultaneously filed, and the right of priority and the order of processing will be determined by a public drawing.

(d) Prior to the issuance of any lease, a determination shall be made as to whether or not the lands are within a KGRA. Applications for lands determined to be within any KGRA will be rejected.

§ 3210.4 Rejections.

If, after the filing of an application for a noncompetitive lease and before the issuance of a lease, or amendment thereto, pursuant to that application, the land embraced in the application becomes included within a KGRA, the application will be rejected as to such KGRA lands. The authorized officer retains discretion to reject an application for a noncompetitive lease even though the tract for which application is made is not determined to be within a KGRA.

Subpart 3211—Bureau Motion, Land Previously Leased for Geothermal Resources

§ 3211.1 Releasing of formerly leased lands.

Lands available for noncompetitive leasing in canceled or relinquished leases or in leases which expire by operation of law at the end of their primary or extended terms or in leases which terminate by operation of law for nonpayment of rental pursuant to 30 U.S.C. section 1004, shall be subject to further leasing only in accordance with the provisions of this section. From time to time the authorized officer will publish in the FEDERAL REGISTER, post in each proper BLM office, and provide appropriate news coverage of:

(a) A list of leasing units composed of lands which are available for noncompetitive leasing and which were in canceled, expired, relinquished, or terminated leases.

(b) An announcement that applications for leases on such lands will be received after a specific hour and date and that any applications filed during a specified simultaneous filing period beginning at that time will be regarded as simultaneously filed;

(c) The address of the proper BLM office where applications must be filed and where the terms and conditions under which the lease will be issued are available; and

(d) Requirements for a complete application, indicating that the proposed plan of operation, as required by § 3210.2-1(d) of this chapter, will not be required until there has been a drawing and a consequent determination of priority, but must be filed prior to the issuance of the lease, upon notice from the authorized officer.

§ 3211.2 Applications during simultaneous filing periods.

(a) An application shall conform to the requirements of § 3210.2-1 of this chapter, except as provided below.

(b) Only one complete leasing unit, identified by unit number, may be included in an application. Lands not on the published list may not be included in the application.

(c) An applicant is permitted to file only one application for each numbered unit on the posted list. Submission of more than one application by or on behalf of the applicant for any unit on the posted list will result in the disqualification of all applications submitted by that applicant for the drawing to be held for that particular unit.

(d) The application must be accompanied by a signed statement that the applicant will furnish the information required by these regulations within 15 days after notification that his application is the only one for the tract, or that he is the successful drawee.

(e) Each application filed during a simultaneous filing period must be submitted in a sealed envelope marked "Application for a lease pursuant to 43 CFR Subpart 3211". The envelope will remain sealed until the end of the 30-day simultaneous filing period, at which time the application will be time-stamped simultaneously and serialized. A public drawing of all applications received during the simultaneous 30-day period will be held to determine respective priorities and order of processing.

(f) Applications filed during a simultaneous filing period are subject to the classification criteria established in § 3200.0-5(k) of this chapter, and will be considered as all filed the same day.

(g) The requirements of § 3210.2-1(d) of this chapter requiring a proposed plan of operation need not be satisfied for a complete application during the 30-day simultaneous filing period or during any future designated simultaneous filing period. Such plan must be filed by the successful drawee prior to the issuance of the lease, upon notice from the authorized officer.

(h) Each application must be accompanied by the service charge of $50. The first year's advance rental need not be submitted with the application. A lease may be issued to the first drawee qualified to receive a lease upon payment of the first year's rental. Rental must be received in the proper BLM office within fifteen days from the date of receipt of notice that such rental is due. The drawee failing to submit the rental payment within the time allowed will be automatically disqualified to receive the lease, and consideration will be given to the application of the drawee having the next highest priority in the drawing.

§ 3211.3 Issuance of leases for units on posted list.

(a) If more than one application is received during the simultaneous filing period for the same unit on the list posted pursuant to § 3211.1(a), all applications on that unit filed during that period will be considered simultaneously filed. Priority of filing for such units will be determined by a public drawing. Three applications will be drawn for each unit, and the order in which they are drawn will fix the order in which the successful drawee will be determined. Where less than three applications have been filed, all applications will be drawn to determine priority.

(1) If the lands are determined not to be within any KGRA, a lease may be issued to the successful drawee upon his compliance with all applicable regulations, including those in Subpart 3210 of this chapter.

(b) If only one application is filed during the simultaneous filing period on a unit on the list posted pursuant to § 3211.1(a), a lease on that unit, if the land is not included within any KGRA, may be issued to the applicant, upon his compliance with all applicable regulations, including those in Subpart 3210 of this chapter.

(c) If no application is filed on a unit on the list posted pursuant to § 3211.1(a) within the prescribed simultaneous filing period, the land in that unit, if not within a KGRA, will become available for leasing in accordance with Subpart 3210 of this chapter.

PART 3220—COMPETITIVE LEASES

Subpart 3220—Competitive Leases; General

Sec.

3220.1 General.
3220.2 Nominations.
3220.3 Publication of notice of lease sale.
3220.4 Contents of notice of lease sale.
3220.5 Bidding requirements.
3220.6 Award of lease.

AUTHORITY: 84 Stat. 1566, 30 U.S.C. 1001–1025.

SOURCE: 38 FR 35094, Dec. 21, 1973, unless otherwise noted.

Subpart 3220—Competitive Leases; General

§ 3220.1 General.

(a) Lands within a KGRA, except as provided under § 3201.1 of this chapter, will be available for leasing on the effective date of these regulations.

(b) The authorized officer will accept nominations to lease, or may on his own motion from time to time call for nominations to lease. Nominations may be withdrawn at any time.

§ 3220.2 Nominations.

(a) Nominations will be submitted on a card approved by the Director.

(b) A nomination must be filed in the proper BLM office in duplicate for public lands and triplicate where acquired lands are involved and must include the following:

(1) The nominator's name and address;

(2) A statement of citizenship and qualifications for lease;

(3) A description of the lands; and

(4) A statement of the interests, direct or indirect, held in other Federal geothermal leases in the same State.

§ 3220.3 Publication of notice of lease sale.

Where the Secretary determines to offer lands for competitive leasing he will publish a notice of lease sale in a newspaper of general circulation in the area in which the lands to be leased are located once a week for 4 consecutive weeks, or for such other period as he may direct.

§ 3220.4 Contents of notice of lease sale.

(a) The notice will specify the time and place of sale, the manner in which bids may be submitted, the description of the lands, and the terms and conditions of the sale, including royalty and rental rates.

(b) The notice will indicate the proper BLM office where the terms and conditions under which the lease will be issued are available. The notice will also indicate that the proposed plan of operation, as required by § 3210.2-1(d) of this chapter, must be filed before a lease can be issued.

§ 3220.5 Bidding requirements.

(a) A separate identified sealed bid shall be submitted for each lease unit. Each bidder shall submit with the bid a certified or cashier's check, bank draft, money order, or cash in the amount of one-fifth of the amount bid, together with proof of qualifications as required by these regulations. The balance of the bonus bid shall be paid either in a single payment upon the award of the lease or in two equal annual installments due and payable on the next two anniversary dates.

(b) All bidders are warned against violation of the provisions of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders.

(c) If the lease is terminated by relinquishment, or for failure to make timely payment of annual rentals or for any other reason, any unpaid installments of the bonus bid shall be immediately due and payable to the lessor.

[44 FR 12039, Mar. 5, 1979]

§ 3220.6 Award of lease.

(a) All sealed bids shall be opened at the place, date, and hour specified in the notice. No bids will be accepted or rejected at that time.

(b) In the event that the Secretary determines to issue a lease, that lease shall be awarded to the highest responsible qualified bidder, except as required under Part 3230 of this chapter.

(c) The right to reject any and all bids is reserved. If the authorized officer fails to accept the highest bid for a lease within 30 days after the date on which the bids are opened (or such longer period as may be needed to comply with § 3230.1-6 of this chapter), all bids for that lease will be considered rejected. Deposits on rejected bids will be returned.

(d) If the lease is awarded, three copies of the lease will be sent to the successful bidder who shall be required to execute them within 30 days from receipt thereof, to pay the first year's rental, file the required bond or bonds; and submit the proposed plan of operation as required by § 3210.2-1(d) of this chapter. When the three copies of the lease are executed by the successful bidder and returned to the authorized officer, the lease will be executed by the authorized officer and a copy will be mailed to the lessee.

(e) If the successful bidder fails to execute the lease or otherwise comply with the applicable regulations, the deposit will be forfeited and disposed of as provided in section 20 of the Act. In this event, the lands may be reoffered when it is determined, in the opinion of the Secretary, that sufficient interest exists to justify a competitive lease sale.

[44 FR 12039, Mar. 5, 1979]

PART 3230—RIGHTS TO CONVERSION TO GEOTHERMAL LEASES OR APPLICATION FOR GEOTHERMAL LEASES

Subpart 3230—Rights to Conversion to Geothermal Leases or Application for Geothermal Leases; General

Sec.

3230.1 General.
3230.1-1 Rights to conversion to geothermal leases.
3230.1-2 Rights to conversion to applications for geothermal leases.
3230.1-3 Land in which minerals are reserved to the United States.
3230.1-4 Conflicting claims of rights to conversion to geothermal leases, or to applications for geothermal leases.
3230.1-5 Evidence required to qualify for grant of rights to conversion to geothermal leases, or to applications for geothermal leases.
3230.1-6 Method of leasing to owners of conversion rights to geothermal leases, or to applications for geothermal leases.
3230.1-7 Acreage limitation.
3230.2 Qualifications.
3230.3 Applications.
3230.3-1 Filing of application.
3230.3-2 Statements required.
3230.4 Conversion to geothermal leases or to applications for geothermal leases.
3230.4-1 Processing and adjudicating applications.

AUTHORITY: 84 Stat. 1566, 30 U.S.C. 1001-1025.

SOURCE: 38 FR 35095, Dec. 21, 1973, unless otherwise noted.

Subpart 3230—Rights to Conversion to Geothermal Leases or Application for Geothermal Leases

§ 3230.1 General.

§ 3230.1-1 Rights to conversion to geothermal leases.

Where lands were on September 7, 1965, subject to valid leases or permits issued under the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181-287), or the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351-358), or subject to existing mining claims located on or prior to September 7, 1965, the lessees, permittees, or claimants, or their successors in interest, if qualified to hold geothermal leases, shall have the right, subject to certain limitations as hereinafter provided, to convert such leases, permits or claims to geothermal leases covering the same lands. Upon issuance of a geothermal lease based upon the exercise of conversion rights hereunder, such outstanding leases, permits, or mining claims shall be deemed to be terminated or relinquished, respectively.

§ 3230.1-2 Rights to conversion to applications for geothermal leases.

Where lands were subject to application for leases or permits under the mineral leasing laws referred to in § 3230.1-1 on September 7, 1965, the applicants may, subject to certain limitations as hereinafter provided, convert their applications to applications for geothermal leases having priorities dating from the time of filing such applications under said mineral leasing laws. Upon issuance of a geothermal lease based upon the exercise of conversion rights hereunder, such pending applications for leases or permits shall be deemed to be withdrawn.

§ 3230.1-3 Land in which minerals are reserved to the United States.

Where a right to one of the forms of conversion referred to in § 3230.1-1 or § 3230.1-2 is claimed as to lands the surface of which has passed from Federal ownership but in which the minerals have been reserved to the United States, final action on any claim to conversion rights under section 4 of the Act shall be held in abeyance until such time as the question of title to the geothermal resources in such lands has been resolved pursuant to the provisions of section 21(b) of the Act, unless the Secretary determines that it is in the public interest to make a determination of such claims at an earlier time, subject to the rights, if any, of surface owners.

§ 3230.1-4 Conflicting claims of rights to conversion to geothermal leases, or to applications for geothermal leases.

(a) Where there are conflicting claims of rights to conversion to geothermal leases based upon mineral leases, mineral permits, or mining claims embracing the same land, the date of issuance of the permit or lease or of recordation of the claim shall determine priority.

(b) Where there are rights to conversion to applications for geothermal leases based on applications for mineral leases or permits in conflict with rights to conversion to geothermal leases based upon mining claims embracing the same lands, the mining claim right to convert to a geothermal lease shall have priority. If the applicant for a geothermal lease based upon a mining claim fails to qualify for any reason, the application for an application for a geothermal lease is entitled to priority based on the date of filing the application for a mineral lease or permit.

§ 3230.1-5 Evidence required to qualify for grant of rights to conversion to geothermal leases, or to applications for geothermal leases.

(a) Any person claiming rights to conversion to a geothermal lease must show to the reasonable satisfaction of the authorized officer that substantial expenditures for the exploration, development or production of geothermal steam, but not associated geothermal resources, were made by the applicant who is seeking the conversion on the lands for which a lease is sought or on adjoining, adjacent or nearby lands, including both Federal and non-Federal lands. The substantial expenditures must have been made prior to December 24, 1970, and either by the applicant seeking conversion or by his predecessors in interest.

(b) For purposes of these regulations, an application for a lease or a permit, filed pursuant to applicable mineral leasing acts, pending on September 7, 1965, which subsequently ripened into a lease or permit, and which remains outstanding or has either terminated, expired or been canceled or relinquished, retains the right to conversion to an application for a geothermal lease. Applications for a lease or permit, filed pursuant to applicable mineral leasing acts, pending on September 7, 1965, which were subsequently withdrawn, retain the right to conversion to an application for a geothermal lease. Leases or permits issued pursuant to the applicable mineral leasing acts and outstanding on September 7, 1965, which were subsequently terminated, expired, or were canceled or relinquished, retain the right to conversion to a geothermal lease.

§ 3230.1-6 Method of leasing to owners of conversion rights to geothermal leases, or to applications for geothermal leases.

(a) *Lands included within any KGRA*—(1) *Competitive lease.* Where lands have been included within any KGRA prior to the issuance of a lease, the owner of a conversion right to a geothermal lease for such lands shall be entitled to the issuance of a competitive lease only in accordance with the provisions of paragraph (a)(2) of this section. If the lands subject to a conversion right to a geothermal lease are in part within a KGRA and in part outside a KGRA, the holder of that conversion right shall have the right to divide his conversion right into two separate conversion rights so that he may receive a geothermal lease to the lands within the KGRA only subject to paragraph (a)(2) of this section and a geothermal lease to the lands not within a KGRA subject to paragraph (b) of this section.

(2) *Preference right.* (i) Lands which have been included within any KGRA shall be leased only by competitive bidding in the manner prescribed in Subpart 3220 of this chapter, except that, in addition, the name and address of the applicant for any conversion right to a geothermal lease will be set forth in the lease sale notice.

(ii) The person owning the right to conversion to a geothermal lease shall be informed by written notice of the highest bona fide bid submitted for the lease at the sale. If within thirty (30) days after he has received that written notice, the person owning the right to conversion to a geothermal lease shall inform the authorized officer that he wishes such a lease, pay an amount equal to the highest bona fide bid submitted, pay the rental for the first year, file the required bond or bonds, and submit the date required by § 3210.2-1(d) and (e) of this chapter, a lease will be issued to him.

(iii) Failure of the owner of the right to conversion to a geothermal lease to inform the authorized officer timely will constitute a forfeiture of his conversion rights without further notice to him. In this event, the lease will be offered to the highest bona fide bidder, if otherwise qualified.

(iv) Where no bids are received, the person owning the right to conversion to a geothermal lease will not be awarded the lease. Failure of the owner of the right to conversion to submit a bona fide bid or to meet the high bid for the tract offered at the sale will constitute a forfeiture of his conversion right without further notice.

(b) *Lands not included within any KGRA—Noncompetitive lease.* Where lands have not been included within any KGRA prior to the issuance of a lease, the owner of a conversion right to a geothermal lease for such lands, if otherwise qualified, shall be entitled to the issuance of a noncompetitive lease for such lands.

(c) *Lands included within a KGRA*—(1) *Application for a lease.* Where lands have been included within a KGRA prior to the issuance of a lease, the owner of a conversion right to an application for a geothermal lease to those lands shall be entitled to receive a competitive geothermal lease only in accordance with the provisions of Subpart 3220 of this chapter. If the lands subject to a conversion right to a geothermal application are in part within a KGRA and in part outside a KGRA, the holder of that conversion right may amend his application to cover only the land outside the KGRA.

(2) *Preference right.* The owner of a conversion right to an application for a geothermal lease where the lands have been included within a KGRA shall receive no preference right to meet the highest bona fide bid.

(d) *Lands not included within any KGRA*—(1) *Application for a lease.* Where lands have not been included within a KGRA, the owner of a conversion right to an application for a geothermal lease, if otherwise qualified, shall be entitled to convert his right into an application for a noncompetitive lease.

(2) *Preference right.* The owner of a conversion right to an application for a geothermal lease where the lands have not been included within a KGRA, if otherwise qualified, shall be entitled to the issuance of a non-competitive geothermal lease for such lands in accordance with Subpart 3210 of this chapter.

§ 3230.1-7 Acreage limitation.

No person shall be permitted to obtain, through conversion of mineral leases or prospecting permits, or applications therefor, or mining claims, leases for more than 10,240 acres, or a lease to any land not included in the lease, permit, application or claim converted, except that any such geothermal lease issued may include some lands not embraced in the lease, permit, application or claim on which the conversion right is based, where a metes and bounds description was used to describe lands in issued leases or permits or in filed applications or mining claim locations. In such event, the metes and bounds description will be conformed by the authorized office to a legal subdivision, to the extent possible.

§ 3230.2 Qualifications.

Persons who believe they are qualified under the Act to convert mineral leases or permits or existing mining claims to geothermal leases and persons who believe they are entitled to convert applications for mineral leases and permits to applications for geothermal leases shall comply with the procedures set forth below.

§ 3230.3 Applications.

§ 3230.3-1 Filing of application.

(a) A person seeking to convert a lease, permit, or application therefor, or a mining claim to a geothermal lease or application must have filed a written application on or before June 22, 1971. If such an application has been filed and does not contain the information specified in § 3230.3-2, such information must be supplied by the applicant within 60 days of the effective date of these regulations.

(b) Failure to have filed a conversion right application on or before June 22, 1971, will result in the loss of any such rights so claimed.

§ 3230.3-2 Statements required.

(a) An application based on a valid lease or permit referred to in § 3230.1-1 hereof shall include the date of issuance, the State in which the lands are located, and the serial number of the lease or permit. An application based on a mining claim referred to in § 3230.1-1 shall include the name, location, legal description or reference sufficient to identify the lands on the ground, date of location and date and place of recordation of the mining claim (including volume and page), which the applicant seeks to convert to a geothermal lease. An application based on an application for a mineral lease or permit referred to in § 3230.1-1 shall include the date the application for the lease or permit was filed with the Bureau of Land Management and the location of the proper BLM office where the application was filed, and should indicate the serial number assigned to the application.

(b) An application shall include a description of the lands sought to be included in a geothermal lease. If the lands have been surveyed under the public land rectangular survey system, each application shall describe the lands by legal subdivision, section, township, and range. If otherwise officially surveyed, the lands shall be described by the legal description, mining claim survey, or irregular tracts. If the lands have not been so surveyed, but protracted surveys for those lands have been approved and the effective date thereof published in the FEDERAL REGISTER, each application for lands shown on such protracted surveys, filed on or after such effective date, shall describe the lands according to the legal subdivision, section, township, and range shown on the approved protracted surveys. If the lands have not been so surveyed, or included within approved protracted surveys, or it is otherwise appropriate, each application shall describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to a monument or to a prominent topographic feature.

(c) An application shall be accompanied by a detailed statement showing: (1) The expenditure made for the exploration, development, or production of geothermal steam, but not associated geothermal resources, on lands for which a geothermal lease is sought or on adjoining, adjacent or nearby Federal or non-Federal lands and the date or dates such expenditures were made, (2) the names and current addresses of the persons who actually performed the aforesaid exploration, development, or production work, (3) the geological, geophysical, and engineering data acquired in such exploration, development, or production which demonstrates, or tends to demonstrate the expenditures claimed, (4) a map showing the location where the expenditures and improvements were made, (5) a proposed plan as required by § 3210.2-1(e) of this chapter, and (6) a statement that he will be bound by the terms and conditions of a lease, if issued. The applicant shall file such additional information with respect to the application as requested by the authorized officer.

§ 3230.4 Conversion to geothermal leases or to applications for geothermal leases.

§ 3230.4-1 Processing and adjudicating applications.

Application for conversion to geothermal leases or to applications for geothermal leases together with all information and data submitted or requested by the authorized officer pursuant to § 3230.3-2 and any other pertinent available information or data shall be reviewed by the authorized officer to determine whether the required showing has been made, and thereafter the authorized officer shall prepare a proposed determination which shall be submitted to the Secretary, who will make a determination that the applicant has or has not satisfactorily shown that he is entitled to receive the grant of a geothermal lease, or application for a geothermal lease.

PART 3240—RULES GOVERNING LEASES

Subpart 3240—Rules Governing Leases—[Reserved]

Subpart 3241—Assignments and Transfers

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AUTHORITY: 84 Stat. 1566, 30 U.S.C. 1001-1025.

SOURCE: 38 FR 35097, Dec. 21, 1973, unless otherwise noted.

Subpart 3240—Rules Governing Leases—[Reserved]

Subpart 3241—Assignments and Transfers

§ 3241.1 Assignments, transfers, interests, qualifications.

§ 3241.1-1 Record title assignments or transfers of leases or undivided lease interests.

(a) The record title of leases may be assigned as to all or part of the leased acreage, except that no assignment will be approved where (1) either the assigned or retained portions created by the assignment would be less than 640 acres, unless the total acreage in the lease being partially assigned includes an irregular subdivision, as provided in § 3203.2 of this chapter in which case the assigned and retained portions may be less than 640 acres by an amount which is smaller than the amount by which the area would be more than 640 acres if the irregular subdivision were added, or (2) an undivided interest is created by assignment of a lease containing less than 640 acres, or (3) where the lease being assigned contains 640 acres or more, and undivided interest of less than 10 percent would be created in the leased acreage. An exception to the minimum acreage provision of this section may be made by the Secretary where he finds such exception is necessary in the interest of conservation of the resources.

(b) A working interest or operating right may be assigned, in accordance with this section, *Provided* That the assigned interest or right, divided or undivided, vests in the holder only the right to explore, develop and produce geothermal resources from the leased lands to the extent of not less than the interest assigned.

(c) All requests for approval of any assignment will be reviewed, prior to approval, to adjust environmental terms and conditions where necessary.

§ 3241.1-2 Qualifications.

(a) No assignment will be approved (1) if the assignee or any other party in interest is not qualified to take and hold a lease; (2) if a required bond is not filed; or (3) if the statement of interest required under § 3202.2-1(a) of this chapter is not filed.

(b) An assignment to a minor other than an heir or devisee of a lessee will not be approved.

(c) The assignment must be accompanied by a signed statement by the assignee either (1) that he is the sole party in interest in the assignment, or (2) setting forth the names and qualifications of the other parties holding interests in the lease. Where the assignee is not the sole party in interest, separate statements must be signed by each of the parties setting forth the nature and extent of the interest of each party and the nature of the agreement between them.

(d) Where an attorney-in-fact or agent signs, on behalf of the assignor or assignee, the instrument of transfer or the application for approval, evidence of the authority of the attorney-in-fact or agent to sign such assignment or application must be furnished to the authorized officer.

(e) For the heir or devisee of the deceased holder of a lease, an operating agreement, or an overriding royalty interest in a producing lease, to be recognized by the authorized officer as the holder of that lease, agreement or interest, the appropriate showing required under the regulations in § 3202.2-6 of this chapter must be furnished to the authorized officer.

§ 3241.2 Requirements for filing of assignments or transfers.

§ 3241.2-1 Place of filing and service charge.

A request for approval of any assignment or other instrument of transfer of a lease or interest therein must be filed in the proper BLM office and accompanied by a nonrefundable service charge of $50. An application request not accompanied by payment of such a service charge will not be accepted for filing.

§ 3241.2-2 Number of copies required.

Three copies of all instruments of assignment or transfer, and a single copy of any additional information required by § 3202.2 of this chapter relating to citizenship or qualification of corporations and associations, including partnerships, must be filed in the proper BLM office.

§ 3241.2-3 Time of filing assignments, transfers of leases, or undivided lease interests.

(a) Any assignment or instrument of transfer of a lease or of an interest therein, including an assignment of working interests, operating agreements, and operating rights, must be filed in the proper BLM office for approval within 90 days from the date of execution of that instrument and must contain all of the terms and conditions agreed upon by the parties thereto, together with evidence and statements similar to that required of an applicant under these regulations in this group.

(b) A separate instrument of assignment must be filed in the proper BLM office for each geothermal lease involving transfers of record title. When transfers to the same person, association, including partnerships, or corporation involve more than one geothermal lease, one request for approval and one showing as to the qualifications of the assignee will be sufficient.

§ 3241.2-4 Forms and statements.

A form approved by the Director, or unofficial copies of that form in current use, must be used for transfers and requests for approval referred to in this section and must be filed in duplicate for public lands and in triplicate where acquired lands are involved. The approved form may be used for an assignment which affects a transfer of the record title to all or part of a geothermal lease, but it is not to be used for any other type of transfer. The application for assignment shall be deemed to be approved upon execution by the authorized officer.

§ 3241.2-5 Description of lands.

Each instrument of transfer must describe the lands involved in the same manner as described in the lease.

§ 3241.3 Bonds.

Where an assignment does not create separate leases, the assignee, if the assignment so provides, may become a joint principal on the bond with the assignor. Any assignment which does not convey the assignor's record title in all of the lands in the lease must also be accompanied by consent of his surety to remain bound under the bond of record as to the lease retained by said assignor, if the bond, by its terms, does not contain such consent. If a party to the assignment has previously furnished a nationwide or statewide bond, no additional showing by such party is necessary as to the bond requirement.

§ 3241.4 Approval.

Upon approval, an assignment shall be effective as of the first day of the lease month following the date of filing of the assignment.

§ 3241.5 Continuing responsibility.

(a) The assignor and his surety will continue to be responsible for the performance of any obligation under the lease until the assignment is approved.

(b) Upon approval, the assignee and his surety shall be responsible for the performance of all lease obligations notwithstanding any terms in the assignment to the contrary.

§ 3241.6 Production payments.

If payments out of production are reserved, a statement must be submitted stating the details as to the amount, method of payment, and other pertinent items.

§ 3241.7 Overriding royalty interests.

§ 3241.7-1 General.

(a) Overriding royalty interests in geothermal leases constitute accountable acreage holdings under these regulations.

(b) If an overriding royalty interest is created which is not shown in the instrument of assignment or transfer, a statement must be filed in the proper BLM office describing the interest.

(c) Any such assignment will be deemed valid if accompanied by a statement over the assignee's signature that the assignee is a citizen of the United States, an association of such citizens, or a corporation organized under the laws of the United States or of one of the States or the District of Columbia, and that his interests in geothermal leases do not exceed the acreage limitations provided in these regulations.

(d) All assignments of overriding royalty interests must be filed for record in the proper BLM office within 90 days from the date of execution. Such interests will not receive formal approval.

§ 3241.7-2 Limitation of overriding royalties.

(a) Except as herein provided, an overriding royalty on the value of the output of all geothermal resources, or any of them, at the point of shipment to market may be created by assignment or otherwise: *Provided*, That, (1) the overriding royalty is not for less than one-fourth (¼) of 1 percent of the value of such output, and does not exceed 50 percent of the rate of royalty due to the United States as specified in the geothermal lease, or as reduced pursuant to such lease, and (2) the overriding royalty, when added to overriding royalties previously created, does not exceed the maximum rate established herein.

(b) The creation of an overriding royalty interest that does not conform to the requirements of paragraph (a) of this section shall be deemed a violation of the lease terms, unless the agreement creating overriding royalties provides (1) for a prorated reduction of all overriding royalties so that the aggregate rate of royalties does not exceed the maximum rate established in paragraph (a) of this section and (2) for the suspension of an overriding royalty during any period when the royalties due to the United States have been suspended pursuant to the terms of the geothermal lease.

§ 3241.8 Lease account status; requirements.

Unless the lease account is in good financial standing as to the area covered by an assignment at the time the assignment and bond are filed, or is placed in good standing before the assignment is reached for action, the request for approval of the assignment will be denied, and the lease shall be subject to termination in accordance with these regulations.

§ 3241.9 Effect of assignment.

An assignment of the record title of the complete interest in a portion of the lands in a lease shall segregate the assigned and retained portions into separate and distinct leases. An assignment of an undivided interest in the entire leasehold shall not segregate the lease into separate or distinct leases.

Subpart 3242—Production and Use of Byproducts

§ 3242.1 General.

Where the Supervisor determines that production, use, or conversion of geothermal steam under a geothermal lease is susceptible of producing a valuable byproduct or byproducts, including commercially demineralized water contained in or derived from such geothermal steam for beneficial use in accordance with applicable State water laws, the authorized officer shall require substantial beneficial production or use thereof, except where he determines that:

(a) Beneficial production or use is not in the interest of conservation of natural resources;

(b) Beneficial production or use would not be economically feasible; or

(c) Beneficial production and use should not be required for other reasons satisfactory to him.

§ 3242.2 Production and use of commercially demineralized water as a byproduct, production, and use of other sources of water.

§ 3242.2-1 General.

Except as provided in these regulations, or the lease, the lessee shall have the right to process fluids, including brine, condensate, and other fluids, which are associated with geothermal steam within lands subject to the geothermal lease for the purpose of developing, producing, and utilizing the commercially demineralized water recovered as a result of such processing.

§ 3242.2-2 Prohibition on production of commercially demineralized water.

The lessee shall not be authorized to engage in the primary production of commercially demineralized water from the produced fluids contained in or derived from geothermal steam referred to in § 3242.2-1, where such use would result in the undue waste of geothermal energy.

§ 3242.2-3 Water wells on geothermal areas.

All leases issued under these regulations shall be subject to the condition that, where the lessee finds only potable water in any well drilled for production of geothermal resources, the Secretary may, when the water is of such quality and quantity as to be valuable and useable for agricultural, domestic, or other purpose, acquire the well with casing installed in the well at the fair market value of the casing.

§ 3242.2-4 State water laws.

Nothing in these regulations shall constitute an express or implied claim or denial on the part of the Federal Government as to its exemption from State water laws.

Subpart 3243—Cooperative Conservation Provisions

§ 3243.1 Cooperative or unit plans.

To conserve the natural resources of any geothermal pool, field or like area more properly, lessees and their representatives may unite with each other or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation or any geothermal resource area, or any part thereof (whether or not any part of that geothermal resource area is then subject to any cooperative or unit plan of development or operation). Applications to unitize shall be filed with the Supervisor who shall certify whether such plan is necessary or advisable in the public interest. The procedure in obtaining approval of a cooperative or unit plan of development, the provisions for the supervision of the cooperative or unit plan, and a suggested text of an agreement, are contained in 30 CFR Part 271.

§ 3243.2 Acreage chargeability.

All leases committed to any unit or cooperative plan approved or prescribed by the Supervisor shall be excepted in determining holdings or control for purposes of acreage chargeability. For the extension of leases committed to a unit plan, see Subpart 3203 of this part.

§ 3243.3 Communitization or drilling agreements.

§ 3243.3-1 Approval.

(a) The Supervisor is authorized, when separate tracts under lease cannot be independently developed and operated in conformity with an established well-spacing or well-development program, to approve, or to require lessees to enter into, communitization or drilling agreements providing for the apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit for the lease, or any portion thereof, with other lands, whether or not owned by the United States, when in the public interest. Operations or production pursuant to such an agreement shall be deemed to be operations or production as to each lease committed thereto.

(b) Preliminary requests to communitize separate tracts shall be filed in triplicate with the Supervisor.

(c) Executed agreements shall be submitted to the Supervisor in sufficient number to permit retention of five copies after approval.

§ 3243.3-2 Requirements.

The agreement shall describe the separate tracts comprising the drilling or spacing unit, disclose the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of all parties, including the United States. The agreement must be signed by or in behalf of all interested necessary parties and will be effective only after approval by the Supervisor.

§ 3243.4 Operating, drilling, development contracts or a combination for joint operations.

§ 3243.4-1 Approval.

(a) The Secretary may on such conditions as he may prescribe, approve operating, drilling, or development contracts made by one or more geothermal lessees, with one or more persons, associations, including partnerships, or corporations whenever he shall determine that such contracts are required for the conservation of natural resources or in the best interest of the United States.

(b) Contracts submitted for approval under this section should be filed with the Supervisor together with enough copies to permit retention of five copies after approval.

(c) The authority of the Secretary to approve operating, drilling or development contracts without regard to acreage limitations ordinarily will be exercised only to permit operators to enter into contracts with a number of lessees sufficient to justify operations on a large scale for the discovery, development, production, or transmission, transportation, or utilization of geothermal resources, and to finance the same.

§ 3243.4-2 Requirements.

(a) The contract must be accompanied by a statement showing all the interests held by the contractor in the area or field and the proposed or agreed plan of operation or development of the field. All the contracts held by the same contractor in the area or field should be submitted for approval at the same time, and full disclosure of the project made. Complete details must be furnished so the Secretary may have facts upon which to make a definite determination in accordance herewith and to prescribe the conditions on which approval of the contracts shall be made.

(b) The application must show a reasonable need for the contract and that it will not result in any concentration of control over the production or sale of geothermal resources which would be inconsistent with the antimonopoly provisions of law.

§ 3243.4-3 Acreage chargeability.

All leases operated under approved operating, drilling or development contracts shall be excepted in determining holdings or control for purposes of acreage chargeability.

Subpart 3244—Terminations and Expirations

§ 3244.1 Relinquishments.

(a) A lease, or any legal subdivision of the area covered by such lease, may be relinquished by the record title holder by filing a written relinquishment in triplicate in the proper BLM office, provided the partial relinquishment does not reduce the remaining acreage in the lease to less than 640 acres, except where a departure is occasioned by an irregular subdivision in which case the remaining leased acreage may be less than 640 acres by an amount which is smaller than the amount by which the area would be more than 640 acres if the irregular subdivision were added, and except that the minimum acreage provision of this section may be waived by the Secretary where he finds such exception is justified on the basis of exploratory and development data derived from activity on the leasehold. The relinquishment must:

(1) Describe the lands to be relinquished as described in the lease;

(2) Include a statement as to whether the relinquished lands had been disturbed and if so whether they were restored as prescribed by the terms of the lease;

(3) State whether wells had been drilled on the lands and if so whether they had been placed in condition for abandonment; and

(4) Furnish a statement that all moneys due and payable to workmen employed on the leased premises have been paid.

(b) A relinquishment shall take effect on the date it is filed, subject to the continued obligation of the lessee and his surety:

(1) To make payments of all accrued rentals and royalties;

(2) To place all wells on the land to be relinquished in condition for suspension of operations or abandonment;

(3) To restore the surface resources in accordance with all regulations and the terms of the lease; and

(4) To comply with all other environmental stipulations provided for by such regulations or lease. A statement must be furnished that all moneys due and payable to workmen employed on the leased premises have been paid.

§ 3244.2 Automatic terminations and reinstatements.

§ 3244.2-1 General.

Except as provided in § 3244.2-2 any lease will automatically terminate by operation of law if the lessee fails to pay the rental on or before the anniversary date of such lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The termination of the lease for failure to pay the rental must be noted on the official records of the proper BLM office. Upon such notation the lands included in such lease will become subject to leasing as provided for in Subpart 3211 of this chapter.

§ 3244.2-2 Exceptions.

(a) *Nominal deficiency.* If the rental payment due under a lease is paid on or before its anniversary date but the amount of the payment is deficient and the deficiency is nominal, the lease shall not have automatically terminated unless the lessee fails to pay the deficiency within the period prescribed in a Notice of Deficiency, or by the due date, whichever is later. A deficiency is nominal if it is not more than $10 or one percentum (1%) of the total payment due, whichever is more. The authorized officer shall send a Notice of Deficiency to the lessee on an approved form. The Notice shall be sent by certified mail, return receipt requested, and shall allow the lessee 15 days from the date of receipt to submit the full balance due to the proper BLM office. If the payment called for in the notice is not made within the time allowed, the lease will have terminated by operation of law as of its anniversary date.

(b) *Reinstatements.* (1) Except as hereinafter provided, the authorized officer may reinstate a lease which has terminated automatically for failure to pay the full amount of rental due on or before the anniversary date, if it is shown to his satisfaction that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee; and a petition for reinstatement, together with the required rental, including any back rental which has accrued from the date of termination of the lease, is filed with the proper BLM office.

(2) The burden of showing that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence will be on the lessee. Reasonable diligence normally requires sending or delivering payments sufficiently in advance

of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. The authorized officer may require evidence, such as post office receipts, of the time of sending or delivery of payments.

(3) Under no conditions will a lease be reinstated if (i) a valid lease has been issued prior to the filing of a petition for reinstatement affecting any of the lands covered by the terminated lease, or (ii) the interest in the lands has been withdrawn, disposed of, or has otherwise become unavailable for leasing. However, the authorized officer will not issue a new lease for lands covered by a lease which terminated automatically until 90 days after the date of termination.

(4) Reinstatement of terminated leases is discretionary with the Secretary. The basic criterion in accordance with which this discretion will be exercised is whether the Secretary would be willing to issue a lease if a new lease offer for the same land were under consideration.

§ 3244.3 Cancellation of lease for noncompliance with regulations or lease terms; notice; hearing.

A lease may be canceled by the authorized officer for any violation of these regulations, the regulations in 30 CFR Part 270, or the lease terms, 30 days after receipt by the lessee of notice from the authorized officer of the violation, unless (a) the violation has been corrected, or (b) the violation is one that cannot be corrected within the notice period and the lessee has in good faith commenced within the notice period to correct the violation and thereafter proceeds diligently to complete the correction. A lessee shall be entitled to a hearing on the matter of any such claimed violation or proposed cancelation of lease if a request for a hearing is made to the authorized officer within the 30-day period after notice. The procedures with respect to notice of such hearing and the conduct thereof, and with respect to appeals from decisions of Administrative Law Judges upon such hearings, shall follow insofar as practicable the procedural rules applicable to hearings and appeals in public lands cases within the jurisdiction of the Board of Land Appeals, Office of Hearings and Appeals, contained in Department Hearings and Appeals Procedures, Part 4 of this title. The period for correction of violation or commencement to correct a violation of regulations or of lease terms, as aforesaid, shall be extended to 30 days after the lessee's receipt of the Administrative Law Judge's decision upon such a hearing if the Administrative Law Judge shall find that a violation exists.

§ 3244.4 Expiration by operation of law.

Any lease for land on which, or for which under an approved cooperative or unit plan of development or operation, there is no production in commercial quantities, or a producing well, or actual drilling operations being diligently prosecuted, will expire at the end of its primary term without notice to the lessee. Notation of such expiration need not be made on the official records, but the lands previously covered by that expired lease will be subject to the filing of new applications for leases only as provided in these regulations.

§ 3244.5 Removal of materials and supplies upon termination of lease.

Upon the expiration of the lease, or the earlier termination thereof pursuant to this subpart, the lessee shall have the privilege at any time within a period of ninety (90) days thereafter of removing from the premises any materials, tools, appliances, machinery, structures, and equipment other than improvements needed for producing wells. Any materials, tools, appliances, machinery, structures, and equipment subject to removal, but not removed within the 90-day period, or any extension thereof that may be granted because of adverse climatic conditions during that period, shall, at the option of the Supervisor, become property of the lessor, but the lessee shall remove any or all such property where so directed by the lessor.

PART 3250—UTILIZATION OF GEOTHERMAL RESOURCES

Subpart 3250—Utilization of Geothermal Resources Through Licensing of Power Plant Sites

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AUTHORITY: Secs. 3 and 24, Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025).

SOURCE: 44 FR 20391, Apr. 4, 1979, unless otherwise noted.

Subpart 3250—Utilization of Geothermal Resources Through Licensing of Power Plant Sites

§ 3250.0-1 Purpose.

The purpose of this subpart is to establish procedures for the utilization of Federal lands under geothermal lease by persons who have purchased or otherwise acquired the production of geothermal steam and geothermal resources for the purpose of generating electric power.

§ 3250.0-3 Authority.

These regulations are issued pursuant to the Geothermal Stream Act of 1970 (30 U.S.C. 1001-1025) which authorizes the Secretary of the Interior to prescribe rules and regulations for the development, utilization, and conservation of geothermal steam resources, protection of the public interest, prevention of waste, and protection of water quality and other environmental qualities. The right to use land under geothermal lease for the purpose of generating electric power may be exercised only in accordance with these regulations.

§ 3250.0-5 Definitions.

As used in this subpart, the term:

(a) "Licensee" means the individual, partnership, corporation, association, municipality or governmental unit which is authorized to use public lands for the construction of facilities and utilization of geothermal resources pursuant to this subpart.

(b) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(c) "Proper BLM office" means the State office of the Bureau of Land Management which administers the land subject to the geothermal lease.

(d) "Power plant site" means that tract of Federal land under geothermal lease authorized for use for a power plant including but not limited to substations, switch yards, waste disposal and storage facilities, utility service lines, transmission lines and appurtenant structures.

(e) "Joint Utilization Agreement" means the arrangement between the holder of a geothermal resource lease and a third party for utilization of geothermal steam and associated geothermal resources produced from a leasehold, for operation of power generating facilities.

(f) "Federal Geothermal Lease" means a lease issued under the Geothermal Steam Act of 1970 pursuant to the leasing regulations contained in Part 3200 of this Title.

(g) "Producible well" means a well capable of producing geothermal steam or geothermal resources in commercial quantities as defined in 30 CFR 270.2 (m) and (n).

§ 3250.0-6 Policy.

It is the policy of this Department to encourage the development and utilization of geothermal resources leased under the Geothermal Steam Act of 1970 in an environmentally acceptable manner. Granting of a lease carries an implied right to reasonable access and land use for development. The provisions of these regulations shall be applied, however, in order to assure reasonable compatibility of a power plant site with other authorized uses and resource values of the land.

§ 3250.1 Applications.

§ 3250.1-1 Requirements for application.

Any lessee or any party to a joint utilization agreement or a sales contract who has completed a producible well or wells and desires a license to use the surface of lands under Federal geothermal lease for construction of an electric generating plant, other than as provided in 30 CFR Part 270 and § 3250.4 of this subpart, shall file an application for such license with the authorized officer.

(a) An application for a license shall be filed in duplicate in the proper BLM office.

(b) Each application must be accompanied by a non-refundable fee of $50.

(c) No specific form is required.

(d) Each application shall include:

(1) A description of the land applied for by legal subdivision, section, township and range, or by approved protraction surveys, if applicable. If the lands have not been surveyed, the lands shall be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract and connected by courses and distances to an official corner of the public land surveys or a prominent readily identifiable geographic location. The approximate acreage involved shall be included as part of the description.

(2) A map or maps showing the boundaries of the site and the location and dimensions of buildings, cooling towers or ponds, waste disposal or storage sites, switch yards, roads, pipelines, utility service lines, transmission lines, and all other structures or facilities to be used in connection with the utilization of the geothermal steam and associated geothermal resources. In addition, the authorized officer may require maps showing the general location of proposed facilities to be used in connection with the power plant site but outside the license area.

(3) A description of the proposed power plant, including the number and capacity of prime movers and generators proposed to be installed, initially and ultimately, together with similar pertinent information about any substations included in the facility. A prime mover is a machine (turbine) that converts a natural force into productive power. The application shall show whether the proposed power plant is to be interconnected with other generating facilities owned by the applicant or others, and whether the power generated is to be sold to others or used by the applicant for its own commercial or industrial purposes.

(4) A copy of any joint utilization agreement or sales contract entered into with a Federal geothermal lessee or lessees and the applicant for the utilization of geothermal steam and associate geothermal resources.

(5) A statement showing the amount of merchantable timber, if any, to be cut, removed or destroyed in the construction of the proposed plant or facility, and a statement of agreement to deposit with the Bureau of Land Management, in advance of contruction, the dollar amount as determined by the authorized officer to be the full stumpage value of the timber to be cut, removed or destroyed.

§ 3250.1-2 Showing of citizenship.

Licenses shall be issued only to citizens of the United States, associations of such citizens, corporations organized under the laws of the United States, any State or the District of Columbia or governmental units, including, without limitation, municipalities. Applicants shall make showings of citizenship as follows:

(a) Individuals shall furnish a statement of their citizenship.

(b) Associations of individuals, including a partnership, shall furnish a copy of the articles of association, if any. The application must be signed by each member of the association, and be accompanied by a statement of citizenship of each member.

(c) *Corporations*. (1) A private corporation shall furnish a copy of its charter or articles of incorporation, duly certified by the proper State official of the State where the corporation was organized, and a copy of the resolution or by-laws authorizing the proposed action.

(2) A corporation, other than a private corporation, including a municipality or governmental unit, shall file (i) a statement showing that it is authorized to construct and operate a plant for utilization of geothermal steam or associated geothermal resources; (ii) a statement that the officer executing the application is authorized to act on behalf of the applicant; and (iii) a copy of its governing body's resolution authorizing such action.

(3) When a corporation is operating in a State other than the State in which it was incorporated, it shall submit a certificate of the Secretary of State or other proper official of the State in which it is operating, asserting that the corporation has complied with the laws of that State governing foreign corporations to the extent required to entitle the corporation to operate in such State.

(4) If a corporation has previously filed with the Bureau of Land Management the papers required in this section, the requirements shall be held to be met if, in making a subsequent application, specific reference is made to such previous filing by date, place and case number.

§ 3250.2 Action on application.

Where the authorized officer determines that an application is incomplete or not in conformity with the law or regulations, he shall notify the applicant of the deficiencies and provide an opportunity for correction of the deficiency.

§ 3250.3 Environmental analysis.

The authorized officer, in cooperation with the U.S. Geological Survey, shall conduct a technical examination/environmental analysis in connection with an application for a license filed under this subpart.

(a) The technical examination shall include an evaluation of the impacts of the operation covered by the license on other land uses, resources or land management programs on or adjacent to the area covered by the license in order to determine the appropriate terms and conditions to be incorporated in such license, as well as consultation with State and local jurisdictions as may be appropriate.

(b) The environmental analysis shall be performed in cooperation or consultation with such Federal, State and local authorities as may be appropriate.

(c) The environmental analysis shall include an analysis of the impact of the proposed operations set forth in the application and a determination as to whether an environmental impact statement (EIS) is required.

§ 3250.4 Actions not requiring a license.

§ 3250.4-1 Research and demonstration projects.

A research and demonstration (R. & D.) project sited on a Federal geothermal lease consisting of a power generating facility of not more than 20 MW's electrical capacity and with a maximum life of five years from the date the facility becomes operational will not require a license under the regulations of this subpart. An R. & D. permit for a facility of 20 MW's or less shall be obtained from the Area Geothermal Supervisor under the provisions of 30 CFR Part 270. In the event an R. & D. project is proposed to be retained for commercial operation after the initial five-year period, a license shall be obtained under this subpart. Application for such a license may be submitted prior to construction or at any time during the 5 year permitted life period of the R. & D. project if conversion of the facility to a power plant is contemplated during the permit period. R. & D. permits granted under 30 CFR Part 270 shall conform to the provisions of § 3200.0-8 of this title.

§ 3250.4-2 Individual well production utilization.

A license shall not be required for the purpose of installing a facility for testing or utilization of the production from an individual well for either electrical power generation or any nonelectrical beneficial use. In order to install such facility, a permit shall be obtained from the Area Geothermal Supervisor, U.S. Geological Survey under the provisions of 30 CFR Part 270. Permits granted under 30 CFR Part 270 shall conform to the provisions of § 3200.0-3 of this title. However, a license shall be required for any substation or facility for transmission or lease of more than 10 MW maximum output.

§ 3250.5 Action required on designated lands.

§ 3250.5-1 Withdrawn or reserved lands.

(a) Where the land sought for a power plant site utilizing geothermal steam or associated geothermal resources is withdrawn or reserved for the use of a Federal Agency other than Interior, the authorized officer shall consult with such other agency before the license is issued. The license shall include any terms and conditions required by the surface managing agency.

(b) Where the land sought for a power plant site utilizing geothermal resources is withdrawn or reserved for the use of an Interior agency, the authorized officer shall consult with such agency before the license is issued. The license shall include any terms and conditions deemed appropriate by the authorized officer.

§ 3250.5-2 Lands under the jurisdiction of the Forest Service.

Where the land sought for a power plant site utilizing geothermal resources is on any National Forest System lands, the authorized officer shall consult with and obtain the agreement of the Forest Service regarding the specific site selection before the license is issued. The license shall include terms and conditions required by the Forest Service for protection of National Forest resources and for multi-use management.

§ 3250.5-3 Lands subject to section 24 of the Federal Power Act.

Where the land sought for a power plant site utilizing geothermal steam or associated geothermal resources is subject to the provisions of section 24 of the Federal Power Act, as amended (16 U.S.C. 818), the license shall be issued subject to such terms and conditions as the Federal Energy Regulatory Commission, Department of Energy, may prescribe.

§ 3250.5-4 Lands not subject to license.

No license shall be issued for lands which are not subject to leasing for development of geothermal resources, including, but not limited to, lands:

(a) Administered as part of the national park system,

(b) Within a national recreation system,

(c) Within a fish hatchery administered by the Secretary, wildlife refuge, wildlife range, game range, wildlife management area, waterfowl production area, or for lands acquired or reserved for the protection and conservation of fish and wildlife that are threatened with extinction, or which are designated as rare and endangered species by the Secretary, or under active consideration for inclusion in such categories as evidenced by the filing of a application for a withdrawal or a proposed withdrawal, or

(d) Held in trust or restricted status for an Indian tribe or individual, within or without the boundaries of an Indian reservation.

§ 3250.6 Licenses.

§ 3250.6-1 Area covered by license.

(a) The area approved for the proposed power plant shall be reasonably compact as determined by the authorized officer and shall be limited to as much of the surface of the lands applied for as the authorized officer determines necessary for the adequate utilization of the geothermal resources.

Prior to commencing any surface disturbing activities related to the construction of a power plant facility licensed under provisions of this chapter, a permit to construct and operate a power facility shall be obtained from the Area Geothermal Supervisor. The application for such permit shall be filed in triplicate with the Supervisor, as provided under the regulations set forth in 30 CFR Part 270.

§ 3250.6-2 License provisions.

(a) A license for an electical power plant shall be granted for a primary term of 30 years with a preferential right to a renewal of such license under such terms and conditions as the Secretary may deem appropriate.

(b) A license shall include such terms and conditions as the authorized officer determines are necessary to protect the mineral, environmental, fish and wildlife, historical and scenic or other resource values of the public lands.

(c) A license shall require a copy of any utility commission license or other Federal, State or local license or permit that is applicable to the proposed power plant to be furnished prior to commencement of any activity relating to plant operation.

§ 3250.6-3 Annual rental.

Rental at a rate to be determined by the authorized officer shall be paid annually, but in no event shall said rental be less than $100 per acre. The first year's rental shall be paid to the authorized officer before issuance of the license and thereafter the rental shall be payable annually on or before the anniversary date of the license. The license shall provide that, beginning with the tenth year, the rental for the lands embraced in the license shall be reassessed, excluding improvements due to development of the geothermal resources, at the discretion of the authorized officer upon notice to the licensee, but not more often than at 10 year intervals thereafter, except in extraordinary circumstances.

§ 3250.7 Bonds. Bonds shall be either corporate surety bonds or personal bonds.

(a) *Surety bond.* The licensee shall furnish and maintain a surety bond of not less than $100,000 conditioned upon compliance with all the terms and conditions of the license. The amount of the bond may be increased at any time that it is deemed proper by the authorized officer.

(b) *Personal bond.* In lieu of a surety bond, the licensee may submit a personal bond accompanied by cash in an amount equal to the dollar amount of the bond or negotiable securities of the United States having a market value at the time of the deposit of not less than the required dollar amount of the bond.

(c) *Obligations under bond.* The licensee shall comply with all the terms and conditions of the license under this subpart and shall be (1) liable for all damages to the lands or property of the United States caused by the licensee or his employees or contractors or employees of such contractors, and (2) indemnify the United States against any liability for damages to life, person or property arising from the occupancy or use of the lands under license. Where a power plant license is granted under these regulations to a State or other governmental agency which has no legal power to assume such liability with respect to damages caused by it to lands or property, such agency will be responsible for repair of all such damages.

§ 3250.8 Assignments and transfers.

(a) Any proposed transfers in whole or in part of any right, title or interest in the plant or facility licensed under this subpart must be filed with the authorized officer. The application for transfer must be accompanied by the same showing of qualifications of the transferee as is required of the applicant under this subpart, and must be supported by a stipulation that the assignee will comply with and be bound by all the terms and conditions of the license. No transfer will be valid unless and until it is approved in writing by the authorized officer.

(b) An application for approval of an assignment or transfer made pursuant to this section shall be accompanied by a non-refundable fee of $50.

§ 3250.9 Relinquishment, expiration, or termination of license.

(a) A licensee may surrender a license by filing a written relinquishment, in triplicate, in the proper BLM office. The relinquishment shall include a statement as to whether the land covered by the license has been disturbed and, if so, whether it has been restored as prescribed by the terms and conditions of the license. The relinquishment will not be accepted until the requirements for reclamation of the land have been met.

(b) A license issued under this part may be terminated by written order of the authorized officer for any violation of any applicable regulation or any license term or condition, after 30 days notice. However, the termination shall not take effect if within the 30 day notice period either (1) the violation is corrected or (2) the licensee has commenced in good faith to correct the violation and shall thereafter proceed diligently to correct the violation where the violation is such that it cannot be corrected within the notice period. If a request for appeal is filed within the 30 day notice period, then the licensee shall be entitled to a hearing on the claimed violation and the termination in accordance with Part 4 of this title. In the event such appeal is timely filed, the period for commencement to correct such violation shall be extended to 30 days after a final decision is rendered if it is found that a violation exists.

(c) Upon the relinquishment , expiration, or termination of the license, the licensee shall, if directed by the authorized officer, remove all structures, machinery, and other equipment from the land covered by the license. Any structures, machinery, or equipment allowed to remain on the land shall become the property of the United States on the expiration of the period allowed for removal of same. Removal of such property shall be at the licensee's expense.

(d) The licensee shall, for a period of not more than six months, maintain any equipment and facilities needed, as determined by the Area Geothermal Supervisor, for the protection of any wells from which production was being utilized by the licensee.

(e) Where land covered by a license has been disturbed, the licensee shall within one year following the relinquishment, expiration, or termination of a license issued under this part restore the land in accordance with the terms and conditions of the license. Additional time may be granted by the authorized officer upon a showing of good cause by the licensee. The bond required by § 3250.7 of this title shall not be released until the reclamation has been completed to the satisfaction of the authorized officer.

Group 3300—Outer Continental Shelf Minerals and Rights-of-Way Management

PART 3300—OUTER CONTINENTAL SHELF MINERALS AND RIGHTS-OF-WAY MANAGEMENT, GENERAL

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AUTHORITY: 43 U.S.C. 1331 et seq.

Source: 44 FR 38276, June 29, 1979, unless otherwise noted.

Subpart 3300—Outer Continental Shelf Mineral and Rights-of-way Management, General

§ 3300.0-1 Purpose.

The purpose of these regulations is to establish the procedures under which the Secretary of the Interior will exercise the authority granted to administer a leasing program for minerals and grant rights-of-way on the submerged lands of the Outer Continental Shelf.

§ 3300.0-2 Policy.

The management of Outer Continental Shelf resources is to be conducted in accordance with the findings, purposes and policy directions provided by the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1332, 1801, 1802), and other Executive, legislative, judicial and Departmental guidance. The Secretary of the Interior shall consider available environmental information in making decisions affecting Outer Continental Shelf resources.

§ 3300.0-3 Authority.

The Outer Continental Shelf Lands Act as amended, (43 U.S.C. 1331 et seq.) authorizes the Secretary of the Interior to issue, on a competitive basis, leases for oil and gas, sulphur, geopressured-geothermal and associated resources, and other minerals in submerged lands of the Outer Continental Shelf. The act authorizes the Secretary of the Interior to grant rights-of-way through the submerged lands of the Outer Continental Shelf. The Energy Policy and Conservation Act of 1975 (42 U.S.C. 6213), prohibits joint bidding by major oil and gas producers.

§ 3300.0–5 Definitions.

As used in this part, the term:

(a) "Act" refers to the Outer Continental Shelf Lands Act of August 7, 1953 (43 U.S.C. 1331 et seq.) as amended.

(b) "Director" means the Director, Bureau of Land Management.

(c) "OCS" means the Outer Continental Shelf, as that term is defined in 43 U.S.C. 1331(a).

(d) "Secretary" means the Secretary of the Interior.

(e) "Bureau" means the Bureau of Land Management.

(f) "Coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States, and includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches, which zone extends seaward to the outer limit of the United States territorial sea and extends inland from the shore lines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by the several coastal States, pursuant to the authority of section 305(b)(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1454(b)(1));

(g) "Affected State" means, with respect to any program, plan, lease sale, or other activity, proposed, conducted, or approved pursuant to the provisions of the act, any State—

(1) The laws of which are declared, pursuant to section 4(a)(2) of the Act, to be the law of the United States for the portion of the Outer Continental Shelf on which such activity is, or is proposed to be conducted;

(2) Which is, or is proposed to be, directly connected by transportation facilities to any artificial island or structure referred to in section 4(a)(1) of the Act;

(3) Which is receiving, or in accordance with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the Outer Continental Shelf and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) Which is designated by the Secretary as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment, or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the Outer Continental Shelf; or

(5) In which the Secretary finds that because of such activity there is, or will be, a significant risk of serious damage, due to factors such as prevailing winds and currents, to the marine or coastal environment in the event of any oilspill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities;

(h) "Marine environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, conditions, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the Outer Continental Shelf;

(i) "Coastal environment" means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, conditions, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone;

(j) "Human environment" means the physical, social, and economic components, conditions, and factors which interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the Outer Continental Shelf;

(k) "Mineral" includes oil, gas, sulphur, geopressured-geothermal and associated resources, and such other minerals as are disposable under mineral laws applicable to the public lands.

(l) "Authorized officer" means any person authorized by law or by delegation of authority to or within the Bureau of Land Management to perform the duties described in this part.

§ 3300.0-6 Cross references.

(a) For Geological Survey regulations governing exploration, development and production on leases, see 30 CFR Part 250 et seq.

(b) For multiple use conflicts, see the Environmental Protection Agency listing of ocean dumping sites—40 CFR Part 228.

(c) For related National Oceanic and Atmospheric Administration programs see:

(1) Marine sanctuary regulations, 15 CFR Part 922;

(2) Fishermen's Contingency Fund, 50 CFR Part 296;

(3) Coastal Energy Impact Program, 15 CFR Part 931;

(d) For Federal Maritime Commission regulations on the oil spill liability of vessels, see 46 CFR Part 544.

(e) For Coast Guard regulations on oil spill liability of operators, see 33 CFR Parts 135 to 136.

(f) For Coast Guard regulations on port access routes, see 33 CFR Part 164.

(g) For compliance with the National Environmental Policy Act, see 40 CFR Parts 1500 through 1508.

(h) For Department of Transportation regulations on offshore pipeline facilities, see 49 CFR Part 195.

(i) For Department of Defense regulations on military activities on offshore areas, see 32 CFR Part 252.

§ 3300.1 Leasing maps and diagrams.

(a) Any area of the OCS which has been appropriately platted as provided in paragraph (b) of this section, is subject to lease for any mineral not included in a subsisting lease issued under the act or meeting the requirements of subsection (a) of section 6 of the Act. Before any lease is offered or issued an area may be (1) withdrawn from disposition pursuant to section 12(a) of the Act, or (2) designated as an area or part of an area restricted from operation under section 12(d) of the Act.

(b) The Bureau shall prepare leasing maps and official protraction diagrams of areas of the OCS. The areas included in each mineral lease shall be in accordance with the appropriate leasing map or official protraction diagram.

§ 3300.2 Information to States.

(a) The information covered in this subsection is prepared by or directly obtained by the Director. Such information is typically not considered to be proprietary or privileged, with the primary exception of specific tract nominations by industry received in response to a Call for Nominations and Comments issued by the Secretary. All other proprietary and privileged information is obtained by or under the control of the U.S. Geological Survey which is responsible for its release in accordance with its regulations (see 30 CFR Parts 250, 251, 252).

(b) The Director, in conjunction with the Director, U.S. Geological Survey, shall prepare an index to OCS information (see 30 CFR 252.5). The index shall list all relevant actual or proposed programs, plans, reports, environmental impact statements, nominations information, environmental study reports, lease sale information and any similar type of relevant information including, modifications, comments and revisions, prepared by or directly obtained by the Director under the act. The index shall be sent on a regular basis to affected States and, upon request, it shall be sent to any affected local government. The public shall be informed of the availability of the index.

(c) Upon request, the Director shall transmit to affected States, local governments or the public, a copy of any information listed in the index which is subject to the control of the Bureau in accordance with the requirements and subject to the limitations of the Freedom of Information Act (5 U.S.C. 552) and regulations implementing said Act, and the regulations contained in 43 CFR Part 2, except as provided in paragraph (d) of this section.

(d) Upon request, the Director shall provide relative indications of interest on tracts nominated as well as any comments filed in response to a Call for Nominations and Comments for a proposed sale. However, no information transmitted shall identify any particular tract with the name of any particular party so as not to compromise the competitive position of any participants in the nominating process.

§ 3300.3 Helium.

(a) Each lease issued or continued under these regulations shall be subject to a reservation by the United States, under section 12(f) of the Act, of the ownership of and the right to extract helium from all gas produced from the leased area.

(b) In case the United States elects to take the helium, the lessee shall deliver all gas containing helium, or the portion of gas desired, to the United States at any point on the leased area or at an onshore processing facility. Delivery shall be made in the manner required by the United States to such plants or reduction works as the United States may provide.

(c) The extraction of helium shall not cause a reduction in the value of the lessee's gas or any other loss for which he is not reasonably compensated, except for the value of the helium extracted. The United States shall determine the amount of reasonable compensation. The United States shall have the right to erect, maintain and operate on the leased area any and all reduction works and other equipment necessary for the extraction of helium. The extraction of helium shall not cause substantial delays in the delivery of natural gas produced to the purchaser of that gas.

§ 3300.4 Payment.

(a) Payments of bonuses, including deferred bonuses, first year's rental, other payments due upon lease issuance, filing charges and fees, annual rentals and costs for grants of pipeline rights-of-way shall be made to the manager of the appropriate OCS field office. All payments shall be made by cash, check or bank draft payable to the Bureau of Land Management, unless otherwise directed by the Secretary.

(b) All other payments required by a lease or the regulations in this part shall be payable to the United States Geological Survey.

Subpart 3310—Leasing Program

§ 3310.0-5 Definitions.

As used in this subpart, the term—"Affected State" and "affected States" means Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, California, Oregon, Washington, and Alaska.

§ 3310.1 Receipt and consideration of nominations, public notice and participation.

(a) During preparation of a proposed 5-year leasing program, the Secretary shall invite and consider suggestions and relevant information for such program from Governors of affected States, local government, industry, other Federal agencies, including the Attorney General in consultation with the Federal Trade Commission, and all interested parties, including the general public. This request for information shall be issued as a notice in the FEDERAL REGISTER. Local governments wishing to respond to such request shall first submit their responses to the Governor of the State in which the local government is located.

(b) The Secretary shall send letters to the Governors of the affected States requesting them to identify specific laws, goals, and policies which they believe should be considered by the Secretary in connection with the leasing program. The Secretary shall also request from the Secretary of Energy information on regional and national energy markets, on OCS production goals and on transportation networks.

§ 3310.2 Review by State and local governments.

(a)(1) The Secretary shall prepare a proposed leasing program. At least 60 days prior to publication of the proposed program in the FEDERAL REGISTER, a copy of the draft of the proposed program shall be forwarded to the Governor of each affected State for comment. The Governor may solicit comments from local governments in his or her State which the Governor determines will be affected by the proposed program.

(2) The Secretary shall reply in writing to any comment on the draft of the proposed program from the Governor of an affected State which is received at least 15 days prior to the submission of the proposed program to the Congress and publication in the FEDERAL REGISTER. All such correspondence between the Secretary and Governor of such State shall accompany the proposed program when it is submitted to the Congress.

(b) The proposed leasing program shall be submitted to the Governors of the affected States for review and comment at the time it is submitted to the Congress and the Attorney General and published in the FEDERAL REGISTER. The Governor of an affected State shall, upon request from any local government affected by the program, submit a copy of the proposed program to such local government. Comments and recommendations on any aspect of the proposed program may be submitted by a State or local government to the Secretary within 90 days after the date of its publication in the FEDERAL REGISTER. Comments and recommendations from local governments shall be submitted first to the Governor of the State in which the local government is located.

(c) At least 60 days prior to approving the final leasing program and any later significant revision, the Secretary shall submit it to the President and the Congress, together with any comments. The Secretary shall indicate in such submission why any specific recommendation of the Attorney General or of a State or local government was not accepted.

§ 3310.3 Periodic consultation with interested parties.

The Secretary shall provide for periodic consultation with State and local governments, existing and potential oil and gas lessees and permittees, and representatives of other individuals or organizations engaged in any activity in or on the OCS, including those involved in fish and shellfish recovery, and recreational activities. This consultation shall take place primarily through appropriate public notice as described in §§ 3310.1 and 3310.2 and through the OCS Advisory Board and its committees, on a regional and national basis. Meetings of the OCS Advisory Board shall be held on specific issues as required by the Board's charter.

§ 3310.4 Consideration of coastal zone management program.

In the development of the leasing program, consideration shall be given to the coastal zone management program being developed or administered by an affected coastal State under section 305 or 306 of the Coastal Zone Management Act of 1972 as amended, (16 U.S.C. 1454, 1455). Information concerning the relationship between a State's coastal zone management program and OCS oil and gas activity shall be requested from the Governors of the affected coastal States and from the Secretary of Commerce prior to the development of the proposed leasing program at the time information is requested under § 3310.1 of this title.

Subpart 3312—Reports From Federal Agencies

§ 3312.1 General.

For oil and gas lease sales shown in an approved leasing schedule and as the need arises for other mineral leasing, the Director shall request the Director, Geological Survey, to prepare a report describing the general geology and potential mineral resources of the area under consideration. The Director shall request other interested Federal agencies to prepare reports describing, to the extent known, any other valuable resources contained within the general area and the potential effect of mineral operations upon the resources or upon the total environment or other uses of the area.

Subpart 3313—Call for Nominations and Comments

§ 3313.1 Nominations of tracts.

(a) The Director may receive and consider tract nominations or requests describing areas and expressing an interest in leasing of minerals.

(b) In accordance with an approved program and schedule for the leasing of lands which may contain oil and gas, the Director shall issue Calls for Nominations and Comments on tracts for the leasing of such minerals in specified areas. The Call for Nominations and Comments shall be published in the FEDERAL REGISTER and may be published in other publications as desirable. Nominations and comments on tracts shall be addressed to the manager of the appropriate OCS office, with copies to the Director and to the Director and the Regional Conservation manager of the Geological Survey. The Director shall also request comments on tracts which should receive special concern and analysis. For an oil and gas lease sale call area, the Director may request comments concerning geological conditions, including bottom hazards; archaeological or cultural sites on the seabed or nearshore; multiple uses of the proposed leasing area, including navigation, recreation and fisheries; and other socioeconomic, biological and environmental information.

§ 3313.2 Tracts near Coastal States.

(a) At the time nominations are solicited for leasing of tracts within 3 geographical miles of the seaward boundary of any coastal State, the Secretary shall provide the Governor of that State information required under section 8(g)(1) of the Act. The Director shall furnish information identifying the areas for leasing as well as all relevant available environmental data for such areas (see 30 CFR 251.14).

(b) After receipt of nominations for tracts within the area described in (a) hereof, the Secretary shall inform the Governor of those tracts that are to be given further consideration for leasing. The Secretary shall enter into consultation with the Governor to determine whether the area may contain oil or gas pools or fields underlying both the OCS and lands subject to the jurisdiction of the State.

(c) After selection for leasing of those tracts which may have oil or gas pools or fields underlying both the OCS and lands under State jurisdiction, the Secretary shall offer the Governor an opportunity to enter into an agreement for the equitable disposition of revenues from such tracts under section 8(g)(2) of the Act.

(d) If no agreement can be reached within 90 days of the Secretary's offer, the tracts may be leased and all revenues deposited in a separate Treasury account pending equitable disposition of the revenues under sections 8(g) (3) and (4) of the Act.

Subpart 3314—Tentative Tract Selection

§ 3314.1 General.

(a) The Director, in consultation with the Director, Geological Survey and other appropriate Federal agencies, shall recommend to the Secretary tracts for further environmental analysis and consideration for leasing. The Director, on his or her own motion, in consultation with the Director, Geological Survey, may include in the recommendation tracts which have not been nominated. In making a recommendation, the Director shall consider all available environmental information, multiple-use conflicts, resource potential, industry interest and other relevant information. Comments received from States and local governments and interested parties in response to Calls for Nominations and Comments shall be considered in making recommendations.

(b) After tracts have been tentatively selected, the Director shall evaluate fully the potential effect of leasing on the human, marine and coastal environments, and develop measures to mitigate adverse impacts, including lease stipulations. The views and recommendations of Federal agencies, State agencies, local governments, organizations, industries, and the general public shall be utilized, as appropriate. The Director may hold public hearings on the environmental analysis after appropriate notice.

(c) In general, the Director shall seek to inform the public as soon as possible of tract additions or deletions that occur after the tentative selection of tracts.

§ 3314.2 Tract size.

A tract selected for leasing shall consist of a compact area not exceeding 5760 acres, unless the authorized officer finds that a larger area is necessary to comprise a reasonable economic production unit.

Subpart 3315—Lease Sales

§ 3315.1 Proposed Notice of Sale.

(a) The Director shall in consultation with appropriate Federal agencies develop measures, including lease stipulations and conditions, to mitigate adverse impacts on the environments. For oil and gas lease sales, appropriate proposed stipulations and conditions shall be contained in the proposed notice of lease sale.

(b) A proposed notice of lease sale shall be submitted to the Secretary for approval. All comments and recommendations received and the Director's findings or actions thereon, shall also be forwarded to the Secretary.

(c) Upon approval by the Secretary, the proposed Notice of Sale shall be sent to the Governor of any affected State and be published in the Federal Register.

§ 3315.2 State comments.

(a) Within 60 days after notice of a proposed lease sale, a Governor of any affected State or any affected local government in such State may submit recommendations to the Secretary regarding the size, timing or location of the proposed lease sale. Prior to submitting recommendations to the Secretary, any affected local government shall forward such recommendation to the Governor.

(b) The Secretary shall accept such recommendations of the Governor and may accept recommendations of any affected local government if he determines, after having provided the opportunity for consultation, that they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State. A determination of the national interest shall be based on the findings, purposes and policies of the Act.

(c) The Secretary shall communicate to the Governor, in writing, the reasons for his determination to accept or reject such Governor's recommendations, or to implement any alternative means identified in consultation with the Governor to provide for a reasonable balance between the national interest and the well-being of the citizens of the affected State.

§ 3315.3 Department of Energy review.

The Secretary shall allow 30 days for review of the lease terms and conditions by the Secretary of Energy, unless there is an agreement that a shorter period provides a reasonable opportunity for review.

§ 3315.4 Notice of sale.

(a) Upon approval of the Secretary, the Director shall publish the notice of lease sale in the Federal Register as the official publication, and may publish the notice in other publications. The publication in the Federal Register shall be at least 30 days prior to the date of the sale. The notice shall state the place and time at which bids shall be filed, and the place, date and hour at which bids shall be opened. The notice shall contain a description of the areas to be offered for lease and any stipulations, terms and conditions of the sale.

(b) Tracts shall be offered for lease by competitive sealed bidding under conditions specified in the notice of lease sale and in accordance with all applicable laws and regulations. Suggested formats for bidder submissions and joint bidder's statements appear in Appendices A and B of this part.

(c) The notice of lease sale shall contain a reference to the OCS lease form which shall be issued to successful bidders.

(d) With the approval of the Secretary, the Director may defer any part of the payment of the cash bonus according to a schedule announced at the time of the notice of lease sale. Payment shall be made no later than 5 years after the date of the lease sale. The schedule shall contain provisions for guaranteed payment of a deferred bonus.

(e) In order to obtain statistical information to determine which bidding alternatives best accomplish the purposes and policies of the Act, the Director may, until September 18, 1983, require each bidder to submit bids for any OCS area in accordance with more than one of the bidding systems described in section 8(a)(1) of the Act. No more than 10 percent of the tracts offered each year shall contain such a requirement. Leases may be awarded using a bidding alternative selected at random for statistical purposes, if it is otherwise consistent with the purposes and policies of the Act.

Subpart 3316—Issuance of Leases

§ 3316.1 Qualifications of lessees.

(a) In accordance with section 8 of the Act, leases shall be awarded only to the highest responsible qualified bidder.

(b) Mineral leases issued pursuant to section 8 of the Act may be held only by: (1) Citizens and nationals of the United States, (2) aliens lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. 1101(a)(20); (3) private, public or municipal corporations organized under the laws of the United States or of any State or of the District of Columbia or territory thereof, or (4) associations of such citizens, nationals, resident aliens, or private, public, or municipal corporations, States, or political subdivisions of States.

§ 3316.2 Lease term.

(a) All oil and gas leases shall be issued for an initial period of 5 years, or not to exceed 10 years where the authorized officer finds that such longer period is necessary to encourage exploration and development in areas because of unusually deep water or other unusually adverse conditions.

(b) An oil and gas lease shall continue after such initial period for as long as oil or gas is produced from the lease in paying quantities, or drilling or well reworking operations as approved by the Secretary are conducted. The term of an oil and gas lease is subject to further extension as provided in § 3319.9 of this title.

(c) Sulphur leases shall be issued for a term not to exceed 10 years and so long thereafter as sulphur is produced from the leasehold in paying quantities, or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are conducted thereon.

(d) Other minerals leases shall be issued for such term as may be prescribed at the time of offering the leases in the notice of lease sale.

§ 3316.3 Joint bidding provisions.

§ 3316.3-1 Definitions.

The following definitions shall be applicable to § 3316.3 of this title:

(a) *"Single bid"* means a bid submitted by one person for an oil and gas lease under section 8(a) of the Act.

(b) *"Joint bid"* means a bid submitted by two or more persons for an oil and gas lease under section 8(a) of the Act.

(c) *"Average Daily Production"* is the total of all production in an applicable production period which is chargeable under § 3316.3-3 of this title divided by the exact number of calendar days in the applicable production period.

(d) *"Barrel"* means 42 United States gallons.

(e) *"Crude Oil"* means a mixture of liquid hydrocarbons including condensate that exists in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities, but does not include liquid hydrocarbons produced from tar sand, gilsonite, oil shale, or coal.

(f) *"An Economic Interest"* means any right to, or any right dependent upon, production of crude oil, natural gas, or liquefied petroleum products and shall include, but not be limited to, a royalty interest, or overriding royalty interest, whether payable in cash or in kind, a working interest, a net profits interest, a production payment, or a carried interest.

(g) *"Liquefied Petroleum Products"* means natural gas liquid products including the following: ethane, propane, butane, pentane, natural gasoline, and other natural gas products recovered by a process of absorption, adsorption, compression, or refrigeration cycling, or a combination of such processes.

(h) *"Natural Gas"* means a mixture of hydrocarbons and varying quantities of nonhydrocarbons that exist in the gaseous phase.

(i) *"Oil and Gas Lease"* means an oil and gas lease either offered or issued pursuant to the provisions of the Act.

(j) *"Owned"* means:

(1) *With respect to crude oil*—having either an economic interest in or a power of disposition over the production of crude oil;

(2) *With respect to natural gas*—having either an economic interest in or a power of disposition over the production of natural gas; and

(3) *With respect to liquefied petroleum products*—having either an economic interest in or a power of disposition over any liquefied petroleum product at the time of completion of the liquefaction process.

(k) *"Prior Production Period"* means the continuous six month period of January 1 through June 30 preceding November 1 through April 30 for joint bids submitted during the six month bidding period from November 1 through April 30, and means the continuous six month period of July 1 through December 31 preceding May 1 through October 31 for joint bids submitted during the six month bidding period from May 1 through October 31.

(l) *"Production"*—(1) *Of crude oil* means the volume of crude oil produced worldwide from reservoirs during the prior production period. The amount of such crude oil production shall be established by measurement of volumes delivered at the point of custody transfer (e.g., from storage tanks to pipelines, trucks, tankers, or other media for transport to refineries or terminals) with adjustments for:

(i) Net differences between opening and closing inventories, and

(ii) Basic sediment and water;

(2) *Of natural gas* means the volume of natural gas produced worldwide from natural oil and gas reservoirs during the prior production period, with adjustments, where applicable, to reflect

(i) The volume of gas returned to natural reservoirs; and

(ii) The reduction of volume resulting from the removal of natural gas liquids and nonhydrocarbon gases.

(3) *Of liquefied petroleum peoducts* means the volume of natural gas liquids produced from reservoir gas and liquefied at surface separators, field facilities, or gas processing plants worldwide during the prior production period; these liquefied petroleum products include the following:

(i) *Condensate*—natural gas liquids recovered from gas well gas (associated and non-associated) in separators or field facilities;

(ii) *Gas Plant Products*—natural gas liquids recovered from natural gas in gas processing plants and from field facilities. Gas plant products shall include the following as classified according to the standards of the Natural Gas Processors Association (NGPA) or the American Society for Testing and Materials (ASTM):

(A) Ethane—$C^{2}H^{6}$

(B) Propane—$C^{3}H^{8}$

(C) Butane—$C^{4}H^{10}$ including all products covered by NGPA specifications for commercial butane.

(*1*) Isobutane,

(*2*) Normal butane,

(*3*) Other butanes—all butanes not included as isobutane or normal butane;

(D) Butane-Propane Mixtures—All products covered by NGPA specifications for butane-propane mixtures;

(E) Natural Gasoline—A mixture of hydrocarbons extracted from natural gas, which meet vapor pressure, end point, and other specifications for natural gasoline set by NGPA;

(F) Plant Condensate—A natural gas plant product recovered and separated as a liquid at gas inlet separators or scrubbers in processing plants or field facilities; and

(G) Other Natural Gas Plant Products meeting refined product standards (i.e., gasoline, kerosene, distillate, etc.).

(m) "*Six Month Bidding Period*" means the six month period of time

(1) From May 1 through October 31; or

(2) From November 1 through April 30, respectively.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979]

§ 3316.3-2 Joint bidding requirements.

(a) Any person who submits a joint bid for any oil and gas lease during a 6-month bidding period, and who was chargeable for the prior production period with an average daily production in excess of 1.6 million barrels of crude oil, natural gas and liquified petroleum products, shall have filed under oath with the Director, a Statement of Production of crude oil, natural gas and liquified petroleum products, hereinafter referred to as a Statement of Production, no later than 45 days prior to the commencement of the applicable 6-month bidding period of May 1 through October 31, and November 1 through April 30. Statements of Production shall be submitted to the Director, Bureau of Land Management (Attention: 541), Washington, D.C. 20240. The Statement of Production shall indicate that the person was chargeable, in accordance with § 3316.3-3 of this title, with an average daily production in excess of 1.6 million barrels of crude oil, natural gas and liquified petroleum products for the prior production period. The Director shall publish semi-annually in the FEDERAL REGISTER a "List of Restricted Joint Bidders" to be effective immediately upon publication and to continue in force and effect until a subsequent list is published. The "List of Restricted Joint Bidders" shall consist of those persons, who in the judgment of the Director, based on information available to him, including, but not limited to, sworn Statements of Production, are chargeable under § 3316.3-3 of this title with an average daily production in excess of 1.6 million barrels of crude oil, natural gas and liquified petroleum products for the prior production period.

(b) When a person is placed on the List of Restricted Joint Bidders the Director shall serve that person either personally or by certified mail, return receipt requested, with a copy of the Director's Order placing that person on the List of Restricted Joint Bidders. Any appeal from that Order or from an adverse effect of that Order shall be made in accordance with the provisions of 43 CFR Part 4.

(c) The submission of a Statement of Production or of a detailed Report of Production under § 3316.4(h) of this title which misrepresents the chargeable production of the reporting person shall constitute failure to comply with these regulations and any lease awarded in reliance on that Statement or Report of Production may be canceled, pursuant to section 8(o) of the Act and regulations issued thereunder as having been obtained by fraud or misrepresention.

(d) The Secretary may exempt a person from the provisions of §§ 3316.3-2(a), 3316.3-4, 3316.4(h) and 3319.1(b) of this title if it is found, on the record, after an opportunity for an agency hearing, that lands being offered have extremely high cost exploration and development problems and that exploration and development will not occur on such lands unless the exemption is granted.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979, as amended at 45 FR 69174, Oct. 17, 1980]

§ 3316.3-3 Chargeability for production.

(a) As used in this section the following definitions shall control:

(1) "*Person*" means a natural person or company.

(2) "*Company*" means a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any group of persons whether incorporated or not; it also means any receiver, trustee in bankruptcy, or similar official acting for such a company.

(3) "*Subsidiary*" means a company 50 percent or more of whose stock or

other interest having power to vote for the election of directors, trustees, or other similar controlling body of the company is directly or indirectly owned, controlled, or held with the power to vote by another company; a subsidiary shall be deemed a subsidiary of the other company owning, controlling, or holding 50 percent or more of the stock or other voting interest.

(4) "*Security or securities*" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, pre-organization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security" or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

(b) A person filing a Statement of Production under § 3316.3-2 of this title shall be charged with the following production during the applicable prior production period:

(1) The average daily production in barrels of crude oil, natural gas, and liquefied petroleum products which it owned worldwide;

(2) The average daily production in barrels of crude oil, natural gas, and liquefied petroleum products owned worldwide by every subsidiary of the reporting person;

(3) The average daily production in barrels of crude oil, natural gas, and liquefied petroleum products owned worldwide by any person or persons of which the reporting person is a subsidiary; and

(4) The average daily production in barrels of crude oil, natural gas, and liquefied petroleum products owned worldwide by any subsidiary, other than the reporting person, of any person or persons of which the reporting person is a subsidiary.

(c) A person filing a Statement of Production shall be charged with, in addition to the production chargeable under paragraph (b) of this section, but not in duplication thereof, its proportionate share of the average daily production in barrels of crude oil, natural gas, and liquefied petroleum products owned worldwide by every person:

(1) Which has an interest in the reporting person, and

(2) In which the reporting person has an interest, whether the interest referred to in paragraphs (c) (1) and (2) of this section is by virtue of ownership of securities or other evidence of ownership, or by participation in any contract, agreement, or understanding respecting the control of any person or of any person's production of crude oil, natural gas, or liquefied petroleum products, equal to said interest. As used in paragraph (c) of this section "interest" means an interest of at least 5 percent of the ownership or control of a person.

(d) All measurements of crude oil and liquefied petroleum products under this section shall be at 60° F.

(e) (1) For purposes of computing production of natural gas under § 3316.3-2 of this title, chargeability under this section, and reporting under § 3316.4(h) of this title, 5,626 cubic feet of natural gas at 14.73 pounds per square inch (msl) shall equal one barrel.

(2) For purposes of computing production of liquefied petroleum products under § 3316.3-2 of this title, chargeability under § 3316.4(h) of this title, 1.454 barrels of natural gas liquids at 60° F shall equal one barrel of crude oil.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979]

§ 3316.3-4 Bids disqualified.

The following bids for any oil and gas lease shall be disqualified and rejected in their entirety:

(a) A joint bid submitted by 2 or more persons who are on the effective List of Restricted Joint Bidders; or

(b) (1) A joint bid submitted by two or more persons when 1 or more of those persons is chargeable for the prior production period with an average daily production in excess of 1.6 million barrels of crude oil, natural gas and liquified petroleum products and has not filed a Statement of Production as required by § 3316.3-2 of this title for the applicable 6-month bidding period, or (2) any of those persons have failed or refused to file a detailed report of production when required to do so under § 3316.4(h) of this title, or

(c) A single or joint bid submitted pursuant to an agreement (whether written or oral, formal or informal, entered into or arranged prior to or simultaneously with the submission of such single or joint bid, or prior to or simultaneously with the award of the bid upon the tract) which provides:

(1) For the assignment, transfer, sale, or other conveyance of less than a 100 percent interest in the entire tract on which the bid is submitted, by a person or persons on the List of Restricted Joint Bidders, effective on the date of submission of the bid, to another person or persons on the same List of Restricted Joint Bidders; or

(2) For the assignment, sale, transfer or other conveyance of less than a 100 percent interest in any fractional interest in the entire tract (which fractional interest was originally acquired by the person making the assignment, sale, transfer or other conveyance, under the provisions of the act) by a person or persons on the List of Restricted Joint Bidders, effective on the date of submission of the bid, to another person or persons on the same List of Restricted Joint Bidders; or

(3) For the assignment, sale, transfer, or other conveyance of any interest in a tract by a person or persons not on the List of Restricted Joint Bidders, effective on the date of submission of the bid, to 2 or more persons on the same List of Restricted Joint Bidders; or

(4) For any of the types of conveyances described in paragraphs (c)(1), (2) or (3) of this section where any party to the conveyance is chargeable for the prior production period with an average daily production in excess of 1.6 million barrels of crude oil, natural gas and liquified petroleum products and has not filed a Statement of Production pursuant to § 3316.3-2 of this title for the applicable 6-month bidding period. Assignments expressly required by law, regulation, lease or stipulation to lease shall not disqualify an otherwise qualified bid; or

(d) A bid submitted by or in conjunction with a person who has filed a false, fraudulent or otherwise intentionally false or misleading detailed Report of Production.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979, as amended at 45 FR 69175, Oct. 17, 1980]

§ 3316.4 Submission of bids.

(a) A separate sealed bid shall be submitted for each tract unit bid upon as described in the notice of lease sale. A bid may not be submitted for less than an entire tract.

(b) Each bidder shall submit with the bid, a certified or cashier's check or bank draft on a solvent bank, or cash, or any other form of payment approved by the Secretary for one-fifth of the amount of the cash bonus, unless otherwise stated in the Notice of Sale.

(c) If the bidder is an individual a statement of citizenship shall accompany the bid.

(d) If the bidder is an association (including a partnership), the bid shall also be accompanied by a certified copy of the articles of association or appropriate reference to the record of the Bureau in which such a copy has already been filed, with a statement as to any subsequent amendments.

(e) If the bidder is a corporation, the following information shall be submitted with the bid:

(1) A certified copy of the articles of incorporation and a copy either of the minutes of the meeting of the board of directors or of the bylaws indicating that the person signing the bid has authority to do so, or,

(2) In lieu of such a copy, a certificate to that effect signed by the secretary or the assistant secretary of the corporation over the corporate seal, or appropriate reference to the records submitted to the Bureau in connection with which such articles and authority have been previously furnished.

(3) The bid shall be executed in conformance with corporate requirements.

(f) Bidders should be aware of the provisions of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

(g) Every joint bid submitted for any oil and gas lease shall be accompanied by a sworn statement by each joint bidder stating that the bid is not disqualified under § 3316.3-4(c) of this title.

(h) To verify the accuracy of any statement submitted pursuant to § 3316.3-2 of this title and paragraph (g) of this section, the Director may require the person submitting such information to:

(1) Submit no later than 30 days after receipt of the request by the Director, a detailed Report of Production which shall list, in barrels, the average daily production of crude oil, natural gas and liquefied petroleum products chargeable to the reporting person in accordance with § 3316.3-3 of this title for the prior production period, and

(2) Permit the inspection and copying by an official of the Department of the Interior of such documents, records of production of crude oil, natural gas and liquified petroleum products, analyses and other material as are necessary to demonstrate the accuracy of any statement or information contained in any Report of Production.

(i) No bid for a lease may be submitted if the Secretary finds, after notice and hearing, that the bidder is not meeting due diligence requirements on other OCS leases.

[44 FR 38276, June 29, 1979, as amended at 45 FR 69175, Oct. 17, 1980]

§ 3316.5 Award of leases.

(a) Sealed bids received in response to the notice of lease sale shall be opened at the place, date and hour specified in the notice. The opening of bids is for the sole purpose of publicly announcing and recording the bids received and no bids shall be accepted or rejected at that time.

(b) The United States reserves the right to reject any and all bids received for any tract, regardless of the amount offered.

(c) In the event the highest bids are tie bids, the tie bidders (unless they would be disqualified under § 3316.1(b) of this title, or disqualified under § 3316.3-4 of this title if their bids had been joint bids) may file with the Director, within 15 days after notification, an agreement to accept the lease jointly; otherwise all bids shall be rejected.

(d) Pursuant to section 8(c) of the Act, the Attorney General may review the results of the lease sale prior to the acceptance of bids and issuance of leases.

(e) If the authorized officer fails to accept the highest bid for a lease within 60 days after the date on which the bids are opened, all bids for that lease shall be considered rejected.

(f) Written notice of the authorized officer's action shall be transmitted promptly to those bidders whose deposits have been held. If a bid is accepted, such notice shall transmit 3 copies of the lease to the successful bidder. The bidder shall be required, not later than the 15th day after receipt of the lease to execute the lease, pay the first year's rental, pay the balance of the bonus bid, unless deferred, and file a bond as required in § 3318.1 of this title. Deposits and any interest due shall be refunded on rejected bids.

(g) If the successful bidder fails to execute the lease within the prescribed time or otherwise comply with the applicable regulations the deposit shall be forfeited and disposed of as other receipts under the act.

(h) If, before the lease is executed on behalf of the United States, the land which would be subject to the lease is withdrawn or restricted from leasing, all deposits and any interest due shall be refunded.

(i) If the awarded lease is executed by an agent acting on behalf of the bidder, the lease shall be accompanied by evidence that the bidder authorized the agent to execute the lease. When three copies of the lease are executed and returned to the authorized officer, the lease shall be executed on behalf of the United States, and one fully executed copy shall be transmitted to the successful bidder.

(j) No lease or permit shall be issued for any area within 15 statute miles of the boundaries of the Point Reyes Wilderness in California unless the State of California allows exploration, development or production activities in the adjacent navigable waters of the State under section 11(h) of the Act.

§ 3316.6 Lease form.

Oil and gas leases and leases for sulphur shall be issued on forms approved by the Director. Other mineral leases shall be issued on such forms and may be prescribed by the Secretary.

§ 3316.7 Dating of leases.

All leases issued under the regulations in this part shall be dated and become effective as of the first day of the month following the date leases are signed on behalf of the lessor. When prior written request is made, a lease may be dated and become effective as of the first day of the month within which it is so signed.

Subpart 3317—Rentals and Royalties

§ 3317.1 Rentals.

(a) Except for leases issued subject to fixed-net profit sharing provisions, an annual rental shall be due and payable in advance, at the rate specified in the oil and gas leases, on the first day of each lease year prior to discovery of oil or gas on the lease.

(b) The owner of any lease created by the segregation of a portion of a producing lease which is not subject to fixed net profit sharing provisions and on which segregated portion there is no production, actual or allocated, shall pay an annual rental for such segregated portion at the rate per acre or hectare specified in the lease. This rental shall be payable each lease year following the year in which the segregation became effective and prior to a discovery on such segregated portion.

(c) Annual rental paid in any year shall be in addition to, and shall not be credited against, any royalties due from production.

(d) An annual rental on a lease for a mineral other than oil or gas, shall be due and payable, in advance, on the first day of each lease year prior to discovery in paying quantities, at a rate specified in the lease form.

(e) For leases issued subject to the fixed net profit sharing provisions, annual rental payments shall be due and payable in advance, on the first day of each lease year which commences prior to the date the first profit share payment becomes due. The owner of any lease created by the segreation of a portion of a lease subject to fixed net profit sharing provisions, shall pay an annual rental for such segregated portion at the rate per acre or hectare specified in the lease. This rental shall be payable each year following the year in which the segregation becomes effective and shall continue to be due and payable, in advance, on the first day of each year which commences prior to the date the first profit share payment becomes due.

[44 FR 38276, June 29, 1979, as amended at 45 FR 69175, Oct. 17, 1980]

§ 3317.2 Royalties.

(a) Royalties on oil and gas shall be at the rate specified in the lease, unless the Secretary, in order to promote increased production on the leased area through direct, secondary or tertiary recovery means, reduces or eliminates any royalty set forth in the lease.

(b) The royalty on sulphur shall be not less than 5 percent of the gross production or value of the sulphur at the wellhead.

§ 3317.3 Minimum royalty.

For leases which provide for minimum royalty payments, each lessee shall pay the minimum royalty specified in the lease at the end of each lease year beginning with the first lease year following a discovery on the lease.

§ 3317.4 Effect of suspensions on royalty and rental.

(a) If under the provisions of 30 CFR 250.12 (c), (d)(1), or (d)(4), the Director, Geological Survey, with respect to any lease, directs the suspension of both operations and production, or, with respect to a lease on which there is no producible well, directs the suspension of operations, no payment of rental or minimum royalty shall be required for or during the period of suspension.

(b) The lessee shall not be relieved of the obligation to pay rental, minimum royalty or royalty for or during the period of suspension if the Director, Geological Survey:

(1) Under the provisions of 30 CFR 250.12(d)(1) approves, at the request of a lessee, the suspension of operations or production, or both, or

(2) Under the provisions of 30 CFR 250.12(d)(3) suspends any operation, including production.

(c) If the lease anniversary date falls within a period of suspension for which no rental or minimum royalty payments are required under paragraph (a) of this section, the prorated rentals or minimum royalties are due and payable as of the date the suspension period terminates. These amounts shall be computed and notice thereof given the lessee. The lessee shall pay the amount due within 30 days after receipt of such notice. The anniversary date of a lease shall not change by reason of any period of lease suspension or rental or royalty relief resulting therefrom.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979]

Subpart 3318—Bonding

§ 3318.1 Acceptable bonds.

(a) The successful bidder, prior to the issuance of an oil and gas or sulphur lease, shall furnish the authorized officer a corporate surety bond in the sum of $50,000 conditioned on compliance with all the terms and conditions of the lease. Such bond shall not be required if the bidder already maintains or furnishes a bond in the sum of $300,000 conditioned on compliance with the terms of oil and gas and sulphur leases held by the bidder on the OCS for the area in which the lease to be issued is situated.

(b) For the purposes of this section, there are four areas:

(1) The Gulf of Mexico;

(2) The area offshore the Pacific Coast States of California, Oregon, Washington, and Hawaii;

(3) The area offshore the Coast of Alaska; and

(4) The area offshore the Atlantic Coast.

(c) A separate bond shall be required for each area. An operator's bond in the same amount may be substituted at any time for the lessee's bonds.

(d) The amount of bond coverage on leases for other minerals shall be determined by the Director at the time of the offer to lease and shall be stated in the notice of lease sale.

(e) If, as the result of a default, the surety on a Mineral Lease Bond makes payment to the United States of any indebtedness under a lease secured by the bond, the face amount of such bond and the surety's liability shall be reduced by the amount of such payment.

(f) A new bond in the amount of $300,000 shall be posted within 6 months or such shorter period as the authorized officer may direct after a default. In lieu of the $300,000 bond required in this paragraph, a separate bond for each lease may be filed within the time period authorized. Failure to post a new bond shall, at the discretion of the authorized officer, be the basis of cancellation of all leases covered by the defaulted bond, except to the extent a separate bond in lieu of the $300,000 bond required by this paragraph has been filed within the time authorized.

§ 3318.2 Form of bond.

All bonds furnished by a lessee or operator shall be on a form approved by the Director.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979]

§ 3318.3 Additional bonds.

The authorized officer may require additional security in the form of a supplemental bond or bonds or to increase the coverage of an existing bond if, after operations or production have begun, such additional security is deemed necessary.

Subpart 3319—Assignments, Transfers, and Extensions

§ 3319.1 Assignment of leases or interests therein.

(a) Subject to the approval of the authorized officer, leases, or any undivided interest therein, may be assigned in whole, or as to any officially designated subdivision, to anyone qualified under § 3316.1(b) of this title to hold a lease.

(b) An assignment shall be void if it is made pursuant to any prelease agreement described in § 3316.3-4(c) of this title that would cause a bid to be disqualified.

(c) Any approved assignment shall be deemed to be effective on the first day of the lease month following its filing in the appropriate office of the Bureau, unless at the request of the parties, an earlier date is specified in the approval.

(d) The assignor shall be liable for all obligations under the lease accruing prior to the approval of the assignment.

(e) The assignee shall be liable for all obligations under the lease subsequent to the effective date of an assignment, and shall comply with all regulations issued under the Act.

§ 3319.2 Requirements for filing of transfers.

(a)(1) All instruments of transfer of a lease or of an interest therein as to any officially designated subdivision, including operating rights, subleases and assignments of record interest, shall be filed in triplicate for approval within 90 days from the date of final execution. They shall include a statement over the transferee's own signature with respect to citizenship and qualifications similar to that required of a lessee and shall contain all of the terms and conditions agreed upon by the parties thereto. Carried working interests, overriding royalty interests or payments out of production may be created or transferred without requirement for filing or approval.

(2) An application for approval of any instrument required to be filed shall not be accepted unless accompanied by a nonrefundable fee of $25. Any document not required to be filed by these regulations but submitted for record purposes shall be accompanied by a nonrefundable fee of $25 per lease affected. Such documents may be rejected at the discretion of the authorized officer.

(b) An attorney in fact, in behalf of the holder of a lease, operating rights or sublease, shall furnish evidence of authority to execute the assignment or application for approval and the statement required by § 3316.4 of this title.

(c) Where an assignment creates a segregated lease, a bond shall be furnished in the amount prescribed in § 3318.1 of this title. Where an assignment does not create separate leases, the assignee, if the assignment so provides and the surety consents, may become a joint principal on the bond with the assignor.

(d) An heir or devisee of a deceased holder of a lease, or any interest therein, shall be recognized as the lawful successor to such lease or interest, if evidence of status as an heir or devisee is furnished in the form of:

(1) A certified copy of an appropriate order or decree of the court having jurisdiction of the distribution of the estate or,

(2) If no court action is necessary, the statements of two disinterested parties having knowledge of the facts or a certified copy of the will.

(e) In addition to the requirements of paragraph (d) of this section, the heirs or devisees shall file statements that they are the persons named as successors to the estate with evidence of their qualifications as provided in § 3316.4 of this title.

(f) In the event an heir or devisee is unable to qualify to hold the lease or interest, the heir or devisee shall be recognized as the lawful successor of the deceased and be entitled to hold the lease for a period of not to exceed 2 years from the date of death of the predecessor in interest.

(g) Each obligation under any lease and under the regulations in this part shall inure to the heirs, executors, administrators, successors, or assignees of the lessee.

(h) Where the proposed assignment or transfer is by a person who, at the time of acquisition of an interest in the lease, was on the List of Restricted Joint Bidders, and that assignment or transfer is of less than the entire interest of the assignor or transferor, to a person or persons on the same List of Restricted Joint Bidders, the assignor or transferor shall file a copy, prior to approval of the assignment, of all agreements applicable to the acquisition of that lease or a fractional interest.

§ 3319.3 Attorney General review.

Prior to the approval of an assignment or transfer, the Secretary shall consult with and give due consideration to the views of the Attorney General. The Secretary may act on an assignment or transfer if the Attorney General has not responded to the request for consultation within 30 days of said request.

§ 3319.4 Separate filings for assignments.

A separate instrument of assignment shall be filed for each lease. When transfers to the same person, association or corporation, involving more than one lease are filed at the same time for approval, one request for approval and one showing as to the qualifications of the assignee shall be sufficient.

§ 3319.5 Effect of assignment of a particular tract.

(a) When an assignment is made of all the record title to a portion of the acreage in a lease, the assigned and retained portions become segregated into separate and distinct leases. In such a case, the assignee becomes a lessee of the Government as to the segregated tract that is the subject of assignment, and is bound by the terms of the lease as though the lease had been obtained from the United States in the assignee's own name, and the assignment, after its approval, shall be the basis of a new record. Royalty, minimum royalty and rental provisions of the original lease shall apply separately to each segregated portion.

(b) For assignments of a portion of an oil and gas lease approved after the effective date of ths section, each segregated lease shall continue in full force and effect for the primary term of the original lease and so long thereafter as oil or gas is produced from that segregated portion of the leased area in paying quantities or drillng or well reworking operations as approved by the Secretary are conducted.

(c) For those assignments approved prior to the effective date of this section, each segregated lease shall continue in full force and effect for the primary term of the original lease and so long thereafter as oil and gas may be produced from the original leased area in paying quantities or drilling or well reworking operations, as approved by the Secretary, are conducted.

§ 3319.6 Extension of lease by drilling or well reworking operations.

The term of a lease shall be extended beyond the primary term so long as drilling or well reworking operations are approved by the Secretary according to the conditions set forth in 30 CFR 250.35.

§ 3319.7 Directional drilling.

In accordance with an approved exploration plan or development and production plan, a lease may be maintained in force by directional wells drilled under the leased area from surface locations on adjacent or adjoining land not covered by the lease. In such circumstances, drilling shall be considered to have commenced on the leased area when drilling is commenced on the adjacent or adjoining land for the purpose of directional drilling under the leased area through any directional well surfaced on adjacent or adjoining land. Production, drillling or reworking of any such directional well shall be considered production or drilling or reworking operations on the leased area for all purposes of the lease.

§ 3319.8 Compensatory payments as production.

If an oil and gas lessee makes compensatory payments as provided in 30 CFR 250.33 and if the lease is not being maintained in force by other production of oil or gas in paying quantities or by other approved drilling or reworking operations, such payments shall be considered as the equivalent of production in paying quantities for all purposes of the lease.

§ 3319.9 Effect of suspensions on lease term.

(a) If the Director, Geological Survey, directs the suspension of either operations or production, or both, under the provisions of 30 CFR

250.12 (c), (d)(1) or (d)(4) with respect to any lease in its primary term, the primary term of the lease shall be extended by a period equivalent to the period of the suspension.

(b) If the Director, Geological Survey, orders or approves the suspension of either operations or production, or both, under the provision for 30 CFR 250.12 (c), (d)(1), or (d)(4) with respect to any lease extended beyond its primary term, the term of the lease shall not be deemed to expire so long as the suspension remains in effect.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979]

Subpart 3320—Termination of Leases

§ 3320.1 Relinquishment of leases or parts of leases.

A lease or any officially designated subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in triplicate, with the appropriate OCS office of the Bureau. No filing fee is required. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and the surety to make all payments due, including any accrued rentals, royalties and deferred bonuses and to abandon all wells and condition or remove all platforms and other facilities on the land to be relinquished to the satisfaction of the Director, Geological Survey.

§ 3320.2 Cancellation of leases.

(a) Any nonproducing lease issued under the act may be cancelled by the authorized officer whenever the lessee fails to comply with any provision of the act or lease or applicable regulations, if such failure to comply continues for 30 days after mailing of notice by registered or certified letter to the lease owner at the owner's record post office address. Any such cancellation is subject to judicial review as provided in section 23(b) of the Act.

(b) Producing leases issued under the Act may be cancelled by the Secretary whenever the lessee fails to comply with any provision of the Act, applicable regulations or the lease only after judicial proceedings as prescribed by section 5(d) of the Act.

(c) Any lease issued under the Act, whether producing or not, shall be canceled by the authorized officer upon proof that it was obtained by fraud or misrepresentation, and after notice and opportunity to be heard has been afforded to the lessee.

(d) Pursuant to section 5(a) of the Act, the Secretary may cancel a lease when: (1) Continued activity pursuant to such lease would probably cause serious harm or damage to life, property, any mineral, national security or defense, or to the marine, coastal or human environment; (2) the threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and (3) the advantages of cancellation outweigh the advantages of continuing such lease or permit in force. Procedures and conditions contained in 30 CFR 250.12 shall apply as appropriate.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979]

Subpart 3321—Section 6 Leases

§ 3321.1 Effect of regulations on lease.

(a) All regulations in this part, insofar as they are applicable, shall supersede the provisions of any lease which is maintained under section 6(a) of the Act. However, the provisions of a lease relating to area, minerals, rentals, royalties (subject to sections 6(a)(8) and (9) of the Act), and term (subject to section 6(a)(10) of the Act and, as to sulfur, subject to section 6(b)(2) of the Act) shall continue in effect, and, in the event of any conflict or inconsistency, shall take precedence over these regulations.

(b) A lease maintained under section 6(a) of the Act shall also be subject to all operating and conservation regulations applicable to the OCS. In addition, the regulations relating to geophysical and geological exploratory operations and to pipeline rights-of-way are applicable, to the extent that those regulations are not contrary to or inconsistent with the lease provisions relating to area, the minerals, rentals, royalties and term. The lessee shall comply with any provision of the lease as validated, the subject matter of which is not covered in the regulations in this part.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979]

§ 3321.2 Leases of other minerals.

The existence of a lease that meets the requirements of section 6(a) of the Act shall not preclude the issuance of other leases of the same area for deposits of other minerals. However, no other lease of minerals shall authorize or permit the lessee thereunder unreasonably to interfere with or endanger operations under the existing lease. No sulphur leases shall be granted by the United States on any area while such area is included in a lease covering sulphur under section 6(b) of the Act.

Subpart 3331—Studies

§ 3331.1 Environmental studies.

(a) The Director shall conduct a study of any area or region included in any lease sale in order to establish information needed for assessment and management of impacts on the human, marine and coastal environments which may be affected by OCS oil and gas activities in such area or region. Any study shall, to the extent practicable, be designed to predict environmental impacts of pollutants introduced into the environments and of the impacts of offshore activities on the seabed and affected coastal areas.

(b) Studies shall be planned and carried out in cooperation with the affected States and interested parties and, to the extent possible, shall not duplicate studies done under other laws. Where appropriate, the Director shall, to the maximum extent practicable, enter into agreements with the National Oceanic and Atmospheric Administration in executing the environmental studies responsibilities. By agreement, the Director may also utilize services, personnel or facilities of any Federal, State or local government agency in the conduct of such study.

(c) Any study of an area or region required by paragraph (a) of this section for a lease sale shall be commenced not later than six months prior to holding a lease sale for that area. The Director may utilize information collected in any prior study. The Director may initiate studies for areas or regions not identified in the leasing program.

(d) After the leasing and developing of any area or region, the Director shall conduct such studies as are deemed necessary to establish additional information and shall monitor the human, marine and coastal environments of such area or region in a manner designed to provide information which can be compared with the results of studies conducted prior to OCS oil and gas development. This shall be done to identify any significant changes in the quality and productivity of such environments, to establish trends in the areas studies, and to design experiments identifying the causes of such changes. Findings from such studies shall be used to recommend modifications in practices which are employed to mitigate the effects of OCS activities and to enhance the data/information base for predicting impacts which might result from a single lease sale or cumulative OCS activities.

(e) Information available or collected by the studies program shall, to the extent practicable, be provided in a form and in a timeframe that can be used in the decisionmaking process associated with a specific leasing action or with longer term OCS minerals management responsibilities.

Subpart 3340—Grants of Pipeline Rights-of-way on the Outer Continental Shelf

§ 3340.0-1 Purpose.

(a) The purpose of these regulations is to provide the procedure for the granting and administering of rights-of-way for the transportation of minerals by pipeline through the OCS.

(b) Compliance with the regulations of this subpart does not supersede the requirements of complying with the regulations of the Department of Transportation, the Department of the Army and the Federal Energy Regulatory Commission.

§ 3340.0-2 Policy.

The respective Bureau of Land Management OCS offices shall, as appropriate, engage in transportation planning in advance of receipt of an application for a right-of-way. The intergovernmental planning program or similar process shall be used to involve relevant parties in this advanced planning.

[44 FR 38276, June 29, 1979, as amended at 45 FR 77438, Nov. 24, 1980]

§ 3340.0-4 Responsibilities.

(a) The Bureau of Land Management is responsible for making right-of-way grants for pipelines on the Outer Continental Shelf that are not wholly contained within the boundaries of a single lease, the boundaries of unitized leases or the boundaries of contiguous, not cornering, leases of the same leasee or lessee's operator.

(b) The U.S. Geological Survey is responsible for issuing permits in accordance with the provisions of 30 CFR 250.20 for pipelines on the Outer Continental Shelf which are wholly contained within the boundaries of a single lease, the boundaries of unitized leases or the boundaries of contiguous, not cornering, leases of the same leasee or lessee's operator.

[45 FR 77438, Nov. 24, 1980]

§ 3340.0-5 Definitions.

As used in this subpart, the term "right-of-way" includes the site on which the pipeline and associated structures are situated which shall not exceed 200 feet in width for pipelines unless safety and environmental factors during construction and operations require a greater width and shall be limited to the area reasonably necessary for pumping stations or other accessory structures. It does not include gathering lines and associated structures constructed for the purpose of conveying production for gathering, storage or treating of the production from a lease or leases.

§ 3340.1 Nature of grant.

(a) An applicant, by accepting a right-of-way grant, agrees and consents to comply with the requirements set out below.

(1) The holder shall comply with all existing regulations and with all existing and future regulations which the Secretary determines to be necessary and proper in order to provide for the prevention of waste, the conservation of the natural resources of the OCS and the protection of correlative rights therein. The holder shall comply with all stipulations which the authorized officer attaches to the right-of-way grant for the purpose of assuring maximum environmental protection. The holder shall utilize the best available and safest technologies, such as the safest reasonable pipeline burial techniques, which the Secretary determines to be economically feasible.

(2) The holder shall pay the United States or its lessees or right-of-way holders, as the case may be, the full value for all damages to the property of the United States or its said lessees or right-of-way holders, and shall indemnify the United States against any and all liability for damages to life, person or property arising from the occupation and use of the area covered by the right-of-way grant.

(3) The authorized officer shall be kept informed at all times of the holder's address, and, if a corporation, of the address of its principal place of business and the name and address of the officer or agent authorized to receive service of notice. In the construction, operation and maintenance of the pipeline, the holder shall not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin and shall require an identical provision in all subcontracts.

(4) The granting of the right-of-way shall be subject to the express conditions that the rights granted shall not prevent or interfere in any way with the management, administration of, or the granting, either prior or subsequent to the right-of-way grant, of other rights by the United States. Moreover, the holder agrees to allow the occupancy and use by the United States, its lessees or other rights-of-way holders of any part of the right-of-way grant not actually occupied or necessarily incident to its use for any necessary operations involved in the

management, administration or the enjoyment of such other granted rights.

(5) For the first calendar year or fraction thereof, and thereafter annually, the holder shall pay the Bureau, in advance, an annual rental of $15 for each statute mile or fraction thereof, traversed by the right-of-way and $75 for each area applied for as a site for an accessory to the right-of-way, including, but not limited, to a platform. Payments may be on an annual basis, for a 5-year period or for multiples of the 5-year period.

(6) Upon abandonment, relinquishment, revocation or termination of the right-of-way grant, the holder shall remove any platforms, structures, domes over valves, the pipe, taps and valves along the right-of-way which would present any hazard to navigation or fishing, unless this requirement is waived in writing by the authorized officer. In order to secure a waiver, the holder shall demonstrate to the satisfaction of the authorized officer that any abandonment in place shall not constitute an unreasonable hazard to navigation, fishing or the marine environment, and the line has been purged to remove materials that, if released, could be harmful to the marine environment. The holder shall also demonstrate to the satisfaction of the authorized officer that all open ends of the pipe have been plugged and buried to a minimum cover of three feet or such other depth as may be required by the authorized officer.

Any improvement required to be removed shall be removed by the holder within one year of the effective date of the relinquishment, revocation, termination or abandonment. All such structures, accessories thereto, or improvements not removed within the time provided herein, shall become the property of the United States but that shall not relieve the holder of liability for the cost of their removal or for restoration of the site. Any application for relinquishment of a right-of-way shall be filed in accordance with § 3340.5 of this title.

(7) The holder shall suspend operations of any pipeline for a period of time specified by the authorized officer upon a determination by the authorized officer that continued operation would threaten or result in serious, irreparable, or immediate harm to life (including fish and other aquatic life), to property, to mineral deposits or the marine, coastal or human environments. The authorized officer may, to aid in the determination, request and consider the views and recommendations of appropriate Federal and State agencies. The authorized officer may also suspend operations if the holder fails to comply with applicable law, regulations or terms of the grant. The Secretary may cancel a grant under section 5(a)(2) of the Act.

(8) The holder shall operate and maintain the pipeline in such a manner so as not to pose an unreasonable obstruction to fishing and shipping operations.

(9) The holder shall furnish the authorized officer, within 30 days of request, all data as to maximum design capacity of the pipeline, average product quantity being moved as of the time of request and copies of all contracts for transportation existing at the time of request.

(10) The holder shall assure that such oil or gas pipelines shall, at the option of the Federal Energy Regulatory Commission, either transport or purchase oil or natural gas produced from submerged lands in the vicinity of the pipeline without discrimination and in such proportionate amounts as the Federal Energy Regulatory Commission, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste.

(11) Unless otherwise exempted by the Federal Energy Regulatory Commission pursuant to section 5(f)(2) of the act, the holder shall provide open and nondiscriminatory access to the pipelines to both owner and nonowner shippers.

(12) The holder shall comply with the provisions of section 5(f)(1)(B) of the Act, under which the Federal Energy Regulatory Commission may order an expansion of the throughput capacity of a pipeline which is authorized after September 18, 1978, and

which is not located in the Gulf of Mexico or the Santa Barbara Channel.

(b) Failure to comply with the Act, regulations or any conditions prescribed by the Secretary as to the right-of-way and the survey, location and width of a pipeline shall be grounds for forfeiture of the grant in an appropriate judicial proceeding instituted by the United States in any United States District Court having jurisdiction under the provisions of section 23 of the Act.

(c) Any right-of-way granted under the provisions of this subpart shall be for so long as the pipeline is properly maintained and used for the purpose for which the grant was made, unless otherwise expressly stated in the grant. Temporary cessation or suspension shall not terminate the grant. Where pipeline segments become corroded or otherwise worn and need replacement, proper maintenance may be performed under a temporary cessation of use. If the purpose of the grant ceases to exist or use of the pipeline is permanently discontinued for any reason, the grant shall be subject to forfeiture.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979, as amended at 45 FR 69175, Oct. 17, 1980]

§ 3340.2 Application procedures.

§ 3340.2-1 Applications.

(a) No special form of application is required. The application shall be filed in triplicate in the OCS office having jurisdiction of the lands covered by the application. It shall specify that it is made pursuant to the Act and these regulations and that the applicant agrees that if the right-of-way grant is approved, the grant shall be subject to the terms and conditions of the regulations in this part. It shall also state the primary purpose for which the right-of-way is to be used. If the right-of-way has been utilized prior to the time the application is made, the application shall state the date such utilization commenced and by whom, and the date applicant obtained control of the improvement. A nonrefundable filing fee of $100 and the rental required herein under § 3340.1(a)(5) of this title, shall accompany the application. A separate application shall be filed for each right-of-way.

(b) Each copy of the application shall be accompanied by a map, showing the center line of the right-of-way, properly identified so that the right-of-way can be accurately located by a competent engineer. The map shall comply with the following requirements:

(1) The scale shall be at least 1″:4,000′, or such other scale as may be determined by the authorized officer.

(2) Distances of the center line of the right-of-way and grid references for all turning points shall be given either on the margin of the map or on an attached sheet or sheets with the courses referred to the true or grid meridian, either by deflection from a line of known bearing or by independent observation and calculated distances in feet and decimals.

(3) The total distance and width of the right-of-way shall be given, and the diameter of the pipeline specified.

(4) The initial and terminal points of the right-of-way and any continuation into State jurisdiction shall be accurately located by grid references, even though the right-of-way may have an onshore terminal point.

(5) Each copy of the map shall bear upon its face a signed certificate of the engineer who made the map that the right-of-way is accurately represented upon the map, and the design characteristics are in accordance with Department of Transportation regulations.

(c) Rights-of-way issued pursuant to section 5(e) of the Act may be acquired or held only by citizens and nationals of the United States, aliens lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. 1101(a)(20), private, public or municipal corporations organized under the laws of the United States, the District of Columbia, or of any State, or territory thereof, or associations of such citizens, nationals, resident aliens or private, public or municipal corporations, States or political subdivisions of States.

(d) (1) An individual applicant shall submit with the application a statement of citizenship or nationality. An applicant who is an alien lawfully admitted for permanent residence in the United States shall also submit with the application evidence of such status.

(2) If the applicant is an association (including a partnership), the application shall also be accompanied by a certified copy of the articles of association or appropriate reference to the record of the Bureau in which such a copy has already been filed, with a statement as to any subsequent amendments.

(3) If the applicant is a corporation, the following additional information shall be submitted with the application:

(i) A statement certified by the secretary or assistant secretary of the corporation with the corporate seal, showing the state in which it is incorporated and the name of the person(s) authorized to act on behalf of the corporation, or

(ii) In lieu of such a statement, an appropriate reference to statements or records previously submitted to the Bureau (including material submitted in compliance with prior regulations).

(e)(1) An applicant shall show the extent to which the right-of-way applied for invades or crosses mineral leases and rights-of-way granted by the Bureau of Land Management or pipelines permitted by the U.S. Geological Survey, other than mineral leases, rights-of-way or pipelines of the applicant. The application shall contain a statement that a copy of the application has been delivered personally or by registered or certified mail to each lessee, right-of-way or pipeline permit holder whose lease, right-of-way or pipeline permit is so affected. When the statement is filed, no final action shall be taken on the right-of-way grant application until 30 days have elapsed after the date of service of such papers, in order to afford the parties concerned ample opportunity to comment on the granting of the right-of-way. A copy of the comments shall be filed with the authorized officer for his consideration.

(2) If the authorized officer determines that a change in the application as filed should be made based on the comments received, the authorized officer shall notify the applicant that an amended application shall be filed subject to changes which the authorized officer stipulates. The authorized officer shall determine whether the applicant shall deliver copies of the amended application to other parties for comment pursuant to § 3340.2-1(e)(1) of this title.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979, as amended at 45 FR 77438, Nov. 24, 1980]

§ 3340.2-2 Approval action.

(a) In considering the application for a right-of-way, the authorized officer shall consider the potential effect of the pipeline on the human, marine and coastal environments, life, including aquatic life, property and mineral resources in the entire area during construction and operational phases. The authorized officer shall prepare an environmental analysis in accordance with applicable policies and guidelines. To aid in the evaluation and determinations, the authorized officer may request and consider views and recommendations of appropriate Federal agencies, may hold public meetings after appropriate notice, and may consult, as appropriate, with State agencies, organizations, industries and individuals. The authorized officer shall attach, as a condition to approval, special stipulations and conditions necessary to protect human, marine and coastal environments, life, including aquatic life, property and mineral resources, located on or adjacent to the proposed right-of- way. In approving the pipeline right-of-way, consideration shall be given to any recommendation of the intergovernmental planning program, or similar process, for the assessment and management of OCS oil and gas transportation.

(b) If the right-of-way as applied for crosses any area withdrawn from disposal or restricted from oil and gas activities, it shall be rejected unless the Federal agency in charge of such withdrawn or restricted area gives its consent to the granting of the right-of-way. In such case the applicant, upon request filed within 30 days after receipt of the rejection notice, shall be allowed an opportunity to file an amended application rerouting the proposed right-of-way so as to eliminate the conflict.

(c) Should the proposed route of the right-of-way adjoin and subsequently cross any State submerged lands, the applicant shall submit to the authorized officer evidence that the State or States so affected have reviewed the application, and shall submit any comment received, including any recommendations to relocate the route, if such relocation is considered necessary. In the event of a State recommendation to relocate the proposed route, the authorized officer shall coordinate with the appropriate State officials all applications for right-of-way grants that pass from Federal to State submerged lands.

(d) If an application is for a grant for a right-of-way affecting any land or water use in the coastal zone of any State with a coastal zone management program approved under section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455), then the application shall not be approved unless it is consistent with the approved coastal zone management program or until the Secretary of Commerce makes a finding that the right-of-way will be consistent with the objectives or purposes of the Coastal Zone Management Act of 1972, or is necessary in the interest of national security. However, if the application is for a grant for a right-of-way that has been described in detail in an approved development and production plan, then the application may be approved without a further finding of consistency with any approved coastal zone management program or a further finding on the part of the Secretary of Commerce. (See 30 CFR 250.34-2.)

(e) If the application and other required information are found to be in compliance with applicable law and regulations, the right-of-way may be granted. If the application is rejected, the decision shall be in writing and shall state the reasons for the decision.

§ 3340.3 Construction.

(a) Failure to construct the pipeline within 5 years from the date of the grant shall be deemed to be an abandonment of the grant and deemed to be a forfeiture. Proof of construction shall be submitted to the authorized officer within 90 days after completion of construction of the pipeline. Such proof shall consist of drawings of the pipeline as built, in triplicate; a signed certificate by the engineer that the pipeline is accurately represented; grid references for all turning points on the line; and other data as required by the authorized officer. If there is substantial deviation from the right-of-way as shown on the original map, the unused portion of the grant shall be relinquished and maps, in triplicate, of the location of the right-of-way as constructed shall be furnished to the authorized officer as soon as possible after the deviation is determined to be necessary or advisable. Any deviation made prior to approval of such supplemental plat shall be at the risk of the holder.

(b) Right-of-way grants shall be reviewed annually prior to commencement of construction of any pipeline. Any significant change in conditions subsequent to the granting of a right-of-way but prior to commencement of construction may be grounds for a request to alter the grant by the authorized officer. The authorized officer shall give consideration to any recommendation of the intergovernmental planning program or similar process.

§ 3340.4 Assignment of right-of-way.

(a) Assignment may be made of a right-of-way grant in whole or of any lineal segment thereof, subject to the approval of the authorized officer. Any such proposed assignment shall be filed in triplicate, accompanied by an application for approval in which the assignee shall make the showing required by § 3340.2-1(c) of this title and agree to the terms and conditions prescribed in § 3340.1(a) of this title.

(b) Any proposed assignment, in whole or in part of any right, title or interest in a right-of-way grant, shall be accompanied by the same showing of qualifications of the assignees as is required of an applicant, and shall be supported by a stipulation that the assignee agrees to comply with and to be bound by the terms and conditions of the right-of-way grant. No transfer shall be recognized unless and until it is first approved, in writing, by the authorized officer. A nonrefundable fee of $25 shall acompany the application for the approval of an assignment.

§ 3340.5 Relinquishment of right-of-way.

A right-of-way grant or a portion thereof may be surrendered by the record holder by filing a written relinquishment, in triplicate, with the authorized officer. A relinquishment shall take effect on the date it is filed subject to the satisfaction of all requirements for abandonment in § 3340.1(a)(6) of this title.

[44 FR 38276, June 29, 1979; 44 FR 55380, Sept. 26, 1979]

§ 3340.6 Change of use or flow.

(a) A change may be made by the holder in the use of the pipeline or direction of flow from that specified in the approved permit only if prior approval is obtained from the Department of Transportation and the authorized officer. Application for such a change shall be filed not less than 15 working days in advance of the proposed change of use or flow.

(b) Each application shall specify whether the change is to be temporary or permanent, and any technical changes necessary to accommodate the change.

(c) Each application shall demonstrate that the pipeline is physically and technically adaptable to the proposed change without adverse environmental effects.

§ 3340.7 Bonding.

(a) Prior to the issuance of a right-of-way grant the applicant shall furnish the authorized officer a corporate surety bond in the sum of $300,000 conditioned on compliance with all the terms of the grant. A similar bond shall be furnished for all previously issued rights-of-way within 90 days of the effective date of this section. Such bond shall not be required if the applicant already maintains or furnishes a bond in the sum of $300,000 conditioned on compliance with the terms of all right-of-way grants held by the applicant on the OCS for the area in which the grant to be issued is situated. This bond shall be in addition to any bond required of a lessee in subpart 3318 of this title.

(b) For the purposes of this section, there are four areas: (1) The Gulf of Mexico; (2) the area offshore the Pacific Coast States of California, Oregon, Washington, and Hawaii; (3) the area offshore the Coast of Alaska; and (4) the area offshore the Atlantic Coast.

(c) A separate bond shall be required for each area.

(d) If, as the result of a default, the surety on a right-of-way grant bond makes payment to the Government of any indebtedness under a grant secured by the bond, the face amount of such bond and the surety's liability shall be reduced by the amount of such payment.

(e) A new bond in the amount of $300,000 shall be posted within 6 months or such shorter period as the authorized officer may direct after a default. Failure to post a new bond shall, at the discretion of the authorized officer, be the basis of cancellation of all grants covered by the defaulted bond.

APPENDIX A—SUGGESTED BID FORM

It is suggested that bidders submit their bids to the Manager, Outer Continental Shelf Office, in the following form:

Oil and Gas Bid

The following bid is submitted for an oil and gas lease on the tract of the Outer Continental Shelf specified below:

Tract No...

Total amount bid...

Amount per acre/hectare.................................

Amount of cash bonus submitted with bid...

Proportionate Interest of Company(ies) Submitting Bid

Qualification No..

Company...

Percent interest...

Address...

Signature...(Please type signer's name under signature)

APPENDIX B—REQUIRED JOINT BIDDER'S STATEMENT

In the case of joint bids, each joint

bidder is required to execute a joint bidder's statement before a notary public and submit it with his bid. A suggested form for this statement is shown below.

Joint Bidder's Statement

I hereby certify that ——————————————— (entity submitting bid) is eligible under 43 CFR 3316.3 to bid jointly with the other parties submitting this bid.

———————————————————

Signature (Please type signer's name under signature)

Sworn to and subscribed before me this ——— day of ——— 19——.

———————————————————

Notary Public

State of..

County of..

Group 3400—Coal Management

PART 3400—COAL MANAGEMENT—GENERAL

Subpart 3400—Introduction—General

Sec.

3400.0-3 Authority.
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3400.1 Multiple development.
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3400.3-4 Trust protection lands.
3400.4 Federal/state government cooperation.

AUTHORITY: 30 U.S.C. 181 et seq.; 30 U.S.C. 351-359; 30 U.S.C. 521-531; 30 U.S.C. 1201 et seq.; 42 U.S.C. 7101 et seq.; and 43 U.S.C. 1701 et seq.

SOURCE: 44 FR 42609, July 19, 1979, unless otherwise noted.

Subpart 3400—Introduction—General

§ 3400.0-3 Authority.

(a) These regulations are issued under the authority of and to implement provisions of:

(1) The Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.).

(2) The Mineral Leasing Act for Acquired Lands of August 7, 1947, as amended (30 U.S.C. 351-359 et seq.).

(3) The Federal Land Policy and Management Act of 1976, October 21, 1976 (43 U.S.C. 1701 et seq.).

(4) The Surface Mining Control and Reclamation Act of 1977, August 3, 1977 (30 U.S.C. 1201 et seq.).

(5) The Multiple Mineral Development Act of August 13, 1954 (30 U.S.C. 521-531 et seq.).

(6) The Department of Energy Organization Act of August 4, 1977 (42 U.S.C. 7101 et seq.).

(7) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(8) The Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083-1092).

(9) The Act of October 30, 1978 (92 Stat. 2073-2075).

(b) Specific citations of authority in subsequent subparts of this Group 3400 are to authorities from which the subpart is chiefly derived or which the subpart chiefly implements.

§ 3400.0-4 Responsibilities.

(a) The Bureau of Land Management has the responsibility to:

(1) Assess the unsuitability or the acceptability of Federal lands for leasing and development, or to enter into memoranda of understanding to authorize other Federal surface management agencies to conduct such assessments on lands they administer;

(2) Issue, modify and readjust leases, and serve as the lessor's office of record for and take appropriate action on transfers, relinquishments and similar lease transactions;

(3) Ensure that fair market value is received for rights to extract Federal coal before issuing a lease;

(4) Issue and administer all use authorizations for facilities related to coal development on Bureau of Land Management administered lands outside the permit area;

(5) Determine, in consultation with the Office of Surface Mining Reclamation and Enforcement, the appropriate post mining land use of Bureau of Land Management administered lands on which surface coal mining operations will be conducted;

(6) Include terms in each lease to protect nonmineral and noncoal min-

eral resources and to ensure reclamation of mined lands to the applicable standards;

(7) Recommend judicial action to cancel leases for noncompliance with lease terms;

(8) Consult with other surface management agencies and surface owners when they are involved in or affected by coal management actions that are the primary responsibility of the Bureau of Land Management;

(9) Adjudicate applications for, issue, and administer exploration licenses; and

(10) Review permit applications and advise the Office of Surface Mining Reclamation and Enforcement on measures necessary to protect other resources in the lands and to protect the interests of the holders of noncoal leases, licenses and permits.

(b) The Geological Survey has the responsibility on Federal lands to:

(1) Supervise production and coal resource recovery in the permit area;

(2) Make geologic, engineering, coal resource economic value, and maximum economic recovery determinations for coal related actions of the Department;

(3) Review and concur with mining and exploration plans, and amendments to plans on leases, to establish production and coal resource recovery requirements;

(4) Approve exploration plans and supervise exploration either under an exploration license, or on a lease outside a permit area;

(5) Deal with operators on the matters listed in paragraphs (b) (1) through (4) of this section; and

(6) Recommend tract ranking weights and factors for geologic, engineering and other coal resource criteria.

(c) The Office of Surface Mining Reclamation and Enforcement has the responsibility on Federal lands to:

(1) Approve mining and reclamation permit applications;

(2) Ensure that mining operations are consistent with environmental criteria and permit requirements;

(3) Assure compliance with permits in the conduct of mining and reclamation operations;

(4) Accept and release performance bonds;

(5) Approve applications for exploration within a permit area;

(6) Deal with operators during mining operations on the matters listed in paragraph (c) (1) through (5) of this section;

(7) Recommend tract ranking weights and factors for reclaimability;

(8) Negotiate, in consultation with the Bureau of Land Management and Geological Survey, and recommend for Secretarial approval, cooperative agreements with the states to establish the authority of state regulatory agencies over surface coal mining and reclamation operations on a lease; and

(9) Designate lands, in response to petitions, as unsuitable for all or certain methods of surface coal mining operations, reject petitions, and terminate designations of lands.

(d) The Fish and Wildlife Service has the responsibility on Federal lands to:

(1) Protect and conserve endangered and threatened species, migratory birds, and eagles;

(2) Recommend lands unsuitable for leasing due to fish, wildlife, and related ecological values;

(3) Recommend tract ranking factors and weights, for fish and wildlife;

(4) Recommend lease stipulations related to fish and wildlife values;

(5) Review and recommend postmining land uses of surface mined lands as they relate to the creation or maintenance of fish and wildlife values;

(6) Review exploration plans and mining plans to make recommendations about their potential impacts on fish and wildlife values; and

(7) Review projects authorized under Group 3400 of this title that will result in the impoundment, diversion or control of streams or other bodies of water, for the purposes of mitigating or avoiding adverse impacts on fish and wildlife values.

§ 3400.0-5 Definitions.

As used in this part:

(a) "Alluvial valley floor" means unconsolidated, stream-laid deposits holding streams with water availability sufficient for subirrigation or flood irrigation agricultural activities. This definition does not encompass upland areas generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion; deposits laid down by unconcentrated runoff or slope wash, together with talus or other mass movement accumulations; and windblown deposits.

(b) "Authorized officer" means any employee of the Bureau of Land Management delegated the authority to perform the duty described in the section in which the term is used.

(c) "Bonus" means that value in excess of the rentals and royalties that accrues to the United States because of coal resource ownership that is paid as part of the consideration for receiving a lease.

(d) "Bypass coal" means an isolated coal deposit that cannot, for the foreseeable future, be mined economically and in an environmentally sound manner either separately or as part of any logical mining unit other than that of the applicant for either an emergency lease under the provisions of § 3425.1-4 of this title or a lease modification.

(e) "Casual use" means activities which do not ordinarily lead to any appreciable disturbance or damage to lands, resources or improvements, for example, activities which do not involve use of heavy equipment or explosives and which do not involve vehicle movement except over already established roads and trails.

(f) "Certificate of bidding rights" means a nontransferable right granted by the Secretary to apply the fair market value of a relinquished coal or other mineral lease or right to a preference right coal or other mineral lease as a credit against the bonus bid or bids on a competitive lease or leases acquired at a lease sale or sales, or as a credit against the payment required for a coal lease modification.

(g) "Coal deposits" mean all Federally owned coal deposits, except those held in trust for Indians.

(h) "Coal resource economic value (CREV)" means the value of the coal resource in a proposed lease in its best operational and market application.

(i) "Commercial quantities" as used in paragraph (m) means:

(1) For any lease issued after August 4, 1976, an amount of production equal to one percent of the LMU reserves; or

(2) For any lease issued before August 4, 1976, an amount of production equal to one-fortieth of the LMU reserves.

(j) "Continued operation" means the production of coal equal to one percent of the LMU reserves for each of the first two years following the achievement of diligent development, and an average annual amount of one percent of the LMU reserves thereafter. The average annual amount shall be computed on a three year basis, and the three-year period for which the average shall be computed shall consist of the year in question and the two preceding years.

(k) "Contiguous" means having at least one point in common, including cornering tracts.

(l) "Department" means the United States Department of the Interior.

(m) "Diligent development" means (1) for any lease issued after August 4, 1976, the timely preparation for and initiation of coal production from the LMU of which the lease is a part so that coal is actually produced in commercial quantities by the end of the tenth year from the effective date of the lease; or

(2) For any lease issued before August 4, 1976, the timely preparation for and initiation of coal production from the LMU so that coal is actually produced in commercial quantities before June 1, 1986, except that the period of time during which production of coal in commercial quantities must be achieved may be extended as provided in 43 CFR 3475.4.

(n) "Director" means the Director of the Bureau of Land Management unless otherwise indicated.

(o) "Environmental assessment" means a document prepared by the responsible Federal agency consistent with 40 CFR 1508.9.

(p) "Exploration" means drilling, excavating, and geological, geophysical or geochemical surveying operations designed to obtain detailed data on the physical and chemical characteristics of coal deposits and their environment including the strata above and below the deposits, or the hydrologic conditions associated with the deposit.

(q) "Exploration license" means a license issued by the authorized officer to permit the licensee to explore for coal on unleased Federal lands.

(r) "Exploration plan" means, in relation to an exploration license, a plan prepared in sufficient detail to show the location and type of exploration to be conducted, environmental protection procedures, present and proposed roads, and reclamation and abandonment procedures to be followed upon completion of operations.

(s) "Fair market value" means that amount in cash, or on terms reasonably equivalent to cash, for which in all probability the coal deposit would be sold or leased by a knowledgeable owner willing but not obligated to sell or lease to a knowledgeable purchaser who desires but is not obligated to buy or lease.

(t) "Federal lands" mean lands owned by the United States, without reference to how the lands were acquired or what Federal agency administers the lands, including mineral estates or coal estates underlying private surface, but excluding lands held by the United States in trust for Indians, Aleuts or Eskimos.

(u) "Governmental entity" means a Federal or state agency or a political subdivision of a state, including a county or a municipality, or any corporation acting primarily as an agency or instrumentality of a state, which produces electrical energy for sale to the public.

(v) "Interest" in a lease, application or bid means: any record title interest, overriding royalty interest, working interest, operating rights or option, or any agreement covering such an interest; any claim or any prospective or future claim to an advantage or benefit from a lease; and any participation or any defined or undefined share in any increments, issues, or profits that may be derived from or that may accrue in any manner from the lease based on or pursuant to any agreement or understanding existing when the application was filed or entered into while the lease application or bid is pending.

(w) "Intertract bidding competition" means a lease sale method where tracts containing more reserves in total than the Department intends to lease in that sale are offered for sale, and each bidder competes against other bidders on the same tract for which he bids and against bidders on the other tracts offered in the same sale.

(x) "Known Recoverable Coal Resource Area" or "KRCRA" means an area, including Federal lands which meet minimum standards for recoverable coal deposits in accordance with accepted mining practices, as determined by the Director, Geological Survey. The Federal lands in a KRCRA are classified for coal leasing.

(y) "Lease" means a Federal lease, issued under the coal leasing provisions of the mineral leasing laws, which authorizes the exploration for and extraction of coal. In provisions of this group that also refer to Federal leases for minerals other than coal, the term "Federal coal lease" may be used.

(z) "Lease bond" means the bond or equivalent security given the Department to assure payment of all obligations under a lease, exploration license, or license to mine, and to assure that all aspects of the mining operation other than reclamation operations on a lease are conducted in conformity with the approved mining or exploration plan. This is the same as the "Federal lease bond" referred to in 30 CFR 742.11(a).

(aa) "Licensee" means the holder of an exploration license.

(bb) "License to mine" means a license issued under the provisions of Part 3440 to mine coal for domestic use.

(cc) "Logical Mining Unit" or "LMU" means an area of coal land that can be developed and mined in an efficient, economical, and orderly manner with due regard for the conservation of coal reserves and other resources. An LMU may consist of one or more leases and may include intervening or adjacent non-Federal lands, but all lands in an LMU must be contiguous, under the effective control of a single operator, and capable of being developed and operated as a unified operation with complete extraction of the LMU reserves within 40 years from the date of first approval of a mining plan for that LMU. No LMU approved after August 4, 1976, shall exceed 25,000 acres, including both Federal and non-Federal coal deposits.

(dd) "Logical Mining Unit reserves" mean the sum of (1) estimated recoverable reserves under Federal lease in the LMU, and (2) estimated non-Federal recoverable reserves in the LMU. The LMU reserves associated with a Federal lease are the LMU reserves estimated as of the effective date of the LMU, of which that lease is a part, except that the LMU reserves of this section may be adjusted by the Mining Supervisor whenever he approves a modification of the LMU boundaries or whenever significant new information becomes available concerning the amount of such reserves.

(ee) "Maximum economic recovery" or "MER" means that all portions of the coal deposits within the lease tract shall be mined that have a private incremental cost of recovery (including reclamation, safety and opportunity costs) less than or equal to the market value of the coal.

(ff) "Mining method evaluation" means a written comparison of mining method alternatives used to determine maximum economic recovery.

(gg) "Mineral leasing laws" mean the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.), and the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359).

(hh) "Mining plan" means a mining and reclamation operations plan that fully complies with the requirements of the Mineral Leasing Act of 1920 as amended, the Surface Mining Control and Reclamation Act of 1977, and all other applicable laws and regulations.

(ii) "Mining Supervisor" means the Area Mining Supervisor, Conservation Division, U.S. Geological Survey, or the District Mining Supervisor, or a subordinate acting under the Supervisor's direction.

(jj) "Mining unit" means an area containing technically recoverable coal that will feasibly support a commercial mining operation. The coal may either be Federal coal or be both Federal and non-Federal coal.

(kk) "Operator" means a lessee, licensee or one conducting operations on a lease or exploration license under the authority of the lessee or licensee.

(ll) "Participate" means to have, or take part or share with others, in an exploration license.

(mm) "Permit" means the document that authorizes surface coal mining and reclamation operations on Federal lands issued either by the Director of the Office of Surface Mining Reclamation and Enforcement or, where a cooperative agreement pursuant to section 523 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1273), has been executed by the state regulatory authority (30 CFR Part 741), after approval of a mining plan by the Secretary.

(nn) "Permit area" means the area of land and water within the boundaries of the permit which are designated on the permit application maps, as approved by the regulatory authority. This area shall include, at a minimum, all areas which are or will be affected by the surface coal mining and reclamation operations during the term of the permit.

(oo) "Public bodies" means Federal and state agencies; political subdivisions of a state, including counties and municipalities; rural electric cooperatives and similar organizations; and nonprofit corporations controlled by any such entities.

(pp) "Qualified surface owner" means the natural person or persons (or corporation, the majority stock of which is held by a person or persons) who:

(1) Hold legal or equitable title to the surface of split estate lands;

(2) Have their principal place of residence on the land, or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface mining operations; or receive directly a significant portion of their income, if any, from such farming and ranching operations; and

(3) Have met the conditions of paragraphs (pp)(1) and (2) of this section for a period of at least 3 years, except for persons who gave written consent less than 3 years after they met the

requirements of both paragraphs (pp)(1) and (2) of this section. In computing the three year period the authorized officer shall include periods during which title was owned by a relative of such person by blood or marriage if, during such periods, the relative would have met the requirements of this section.

(qq) "Reserves" means recoverable portion of coal deposits which are commercially producible under existing technology and economics. In these regulations, the terms "reserves" and "recoverable reserves" are used interchangeably.

(rr) "Secretary" means the Secretary of the Interior or his authorized representative.

(ss) "Sole party in interest" means a party who is and will be vested with all legal and equitable rights under a lease, bid, or an application for a lease. No one is a sole party in interest with respect to a lease or bid in which any other party has any interest.

(tt) "Split estate" means land in which the ownership of the surface is held by persons, including governmental bodies, other than the Federal government and the ownership of underlying coal is, in whole or in part, reserved to the Federal government.

(uu) "Substantial legal and financial commitments" means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal handling and preparation, extraction or storage facilities and other capital intensive activities. Costs of acquiring the coal in place or of the right to mine it without an existing mine are not sufficient to constitute "substantial legal and financial commitments".

(vv) "Surface coal mining operations" means activities conducted on the surface of lands in connection with a surface coal mine or surface operations and surface impacts incident to an underground mine, as defined in section 701(28) of the Surface Mining Control and Reclamation Act (30 U.S.C. 1291(28)).

(ww) "Surface management agency" means the Federal agency with jurisdiction over the surface of Federally owned lands containing coal deposits.

(xx) "Surface Mining Officer" means the field representative authorized to act for the Director of the Office of Surface Mining Reclamation and Enforcement.

(yy) "Valid existing rights" as used in section 3461.1 of this title is defined in 30 CFR 761.5.

(zz) "Written consent" means the document or documents that a qualified surface owner has signed that:

(1) Permit a coal operator to enter and commence surface mining of coal;

(2) Describe any financial or other consideration given or promised in return for the permission, including in-kind considerations;

(3) Describe any consideration given in terms of type or method of operation or reclamation for the area;

(4) Contain any supplemental or related contracts between the surface owner and any other person who is a party to the permission; and

(5) Contain a full and accurate description of the area covered by the permission.

§ 3400.1 Multiple development.

The granting of an exploration license, a license to mine or a lease for the prospecting, development, or production of coal deposits shall preclude neither the issuance of prospecting permits or mineral leases for prospecting, development or production of deposits of other minerals in the same land with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations, or selections of leased lands with a reservation of the mineral deposits to the United States.

§ 3400.2 Lands subject to leasing.

The Secretary may issue coal leases on all Federal lands except:

(a) Lands in:

(1) The National Park System;

(2) The National Wildlife Refuge System;

(3) The National Wilderness Preservation System;

(4) The National System of Trails;

(5) The National Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act;

(6) Incorporated cities, towns, and villages;

(7) The Naval Petroleum Reserves, the National Petroleum Reserve in Alaska, and oil shale reserves; and

(8) National Recreation Areas designated by law;

(b) Tide lands, submerged coastal lands within the Continental Shelf adjacent or littoral to any part of land within the jurisdiction of the United States; and

(c) Land acquired by the United States for the development of mineral deposits, by foreclosure or otherwise for resale, or reported as surplus property pursuant to the provisions of the Surplus Property Act of 1944 (50 U.S.C. App. 1622).

§ 3400.3 Limitations on authority to lease.

§ 3400.3-1 Consent or conditions of surface management agency.

Leases for land, the surface of which is under the jurisdiction of any Federal agency other than the Department of the Interior, may be issued only with the consent of the head or other appropriate official of the other agency having jurisdiction over the lands containing the coal deposits, and subject to such conditions as that officer may prescribe to insure the use and protection of the lands for the primary purpose for which they were acquired or are being administered.

§ 3400.3-2 Department of Defense lands.

The Secretary may issue leases with the consent of the Secretary of Defense on acquired lands set apart for military or naval purposes only if the leases are issued to a governmental entity which:

(a) Produces electrical energy for sale to the public;

(b) Is located in the state in which the leased lands are located; and

(c) Has production facilities in that state, and will use the coal produced from the lease within that state.

§ 3400.3-3 Department of Agriculture lands.

Subject to the provisions of § 3400.3-1, the Secretary may issue leases that authorize surface coal mining operations on Federal lands within the National Forest System, provided that such leases may not be issued on lands within a national forest unless the tract is assessed to be acceptable for all or certain stipulated methods of surface coal mining operations under the provisions of Criterion No. 1 in § 3461.1 of this title.

§ 3400.3-4 Trust protection lands.

The regulations in this group do not apply to the leasing and development of coal deposits held in trust by the United States for Indians. See 43 CFR 3400.0-5(t). Regulations governing those deposits are found in 25 CFR Chapter I.

§ 3400.4 Federal/state government cooperation.

(a) In order to implement the requirements of law for Federal-state cooperation in the management of Federal lands, a Department-state regional coal team shall be established for each coal production region defined pursuant to § 3420.3-1(a). The team shall consist of a Bureau of Land Management field representative for each state in the region, who will be the Bureau of Land Management State Director or, in his absence, his designated representative; the Governor of each state or, in his absence, his designated representative; and a representative appointed by and responsible to the Director of the Bureau of Land Management. The Director's representative shall be chairman of the team. If the region is a multi-state region under the jurisdiction of more than one Bureau of Land Management State Office, each State Director shall designate a Bureau of Land Management representative for each state.

(b) Each regional coal team shall consider and suggest policy for regional leasing target setting, tract delineation, and site specific analysis in the coal production region; guide and review tract ranking; and conduct the selection and sale scheduling process in order to recommend regional lease sale alternatives to be analyzed in the regional lease sale environmental impact statement and to be recommended to the Secretary. Each team member may submit a lease sale schedule alternative which shall be treated equally in the draft and final regional lease sale environmental impact statement.

(c) Upon completion of the final regional lease sale environmental impact statement, the chairman shall submit the recommendations of the regional coal team to the Director. Any disagreement as to the recommendations among the team shall be documented and submitted by the chairman along with the team recommendation. The Director shall submit the final regional environmental impact statement to the Secretary for his decision, together with the recommendations of the team and any recommendations the Director may wish to make after review of the final statement.

(d) The regional coal team shall also serve as the forum for Department/state consultation and cooperation in all other major Department coal management program decisions in the region, concerning preference right lease applications, public body and small business setaside leasing, emergency leasing and exchanges.

(e) Participation in the proceedings of a regional coal team need not be limited to the designated representatives of the Bureau of Land Management State Directors or the Governors. Additional representatives of state and Federal agencies may participate directly in team meetings or indirectly in the preparation of material to assist the team at any time at the request of the team chairperson. At a minimum, participation shall be solicited from state and Federal agencies with special expertise in topics considered by the team or with direct responsibilities in areas potentially affected by coal management decisions. However, at every point in the deliberations the official team spokespersons for the Bureau of Land Management and for the Governors shall be those designated under paragraph (a) of this section.

(f) If a state declines to participate under this section in the coal-related activities of the Department:

(1) The Department may take action authorized in Group 3400 of this title in a coal production region wholly within such a state without forming a regional coal team, and

(2) The Department may form a regional coal team without a representative of the Governor of such a state in any multi-state coal production region.

[44 FR 42609, July 19, 1979; 44 FR 56339, Oct. 1, 1979]

PART 3410—EXPLORATION LICENSES

Subpart 3410—Exploration Licenses

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AUTHORITY: 30 U.S.C. 181 et seq.

SOURCE: 44 FR 42613, July 19, 1979, unless otherwise noted.

Subpart 3410—Exploration Licenses

§ 3410.0-1 Purpose.

This subpart provides for the issuance of licenses to explore for coal deposits subject to disposal under Group 3400.

§ 3410.0-2 Objective.

The objective of this subpart is to allow private parties singularly or jointly to explore coal deposits to obtain geological, environmental, and other pertinent data concerning the coal deposits.

§ 3410.0-3 Authority.

(a) These regulations are issued under the authority of the statutes listed in § 3400.0-3 of this title.

(b) These regulations primarily implement section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 201(b)).

§ 3410.0-4 Responsibilities.

(a) The Bureau of Land Management exercises the Secretary's discretionary authority to determine whether exploration licenses are to be issued. The Bureau is also responsible for issuing and cancelling exploration licenses and terminating the period of liability of a licensee under any bond he may have posted as a condition of license issuance. The regulations in this subpart shall be administered by the Director of the Bureau of Land Management through the State Director and the authorized officer, subject to the supervisory authority of the Secretary. The Bureau of Land Management State Office having jurisdiction over the lands involved (43 CFR Subpart 1821) is also the Office of Record.

(b) The Geological Survey exercises the Secretary's authority regarding operations conducted within the area covered by the license, including responsibility for all geological, economic, and engineering determinations.

(c) The authorized officer, in consultation with the Gelogical Survey, and where appropriate, the surface management agency, the Fish and Wildlife Service, and the surface owner, if other than the United States, formulates the requirements to be incorporated in exploration licenses for the protection of the surface resources and for reclamation.

(d) The Geological Survey, after consultation with the authorized officer, and where appropriate, the surface management agency and the surface owner, if other than the United States, shall provide technical review and approval of the exploration plan. The Geological Survey shall recommend bonding requirements to the Bureau of Land Management. Upon the completion of exploration operations, the Geological Survey shall recommend termination of the period of the licensee's liability under any bond posted.

§ 3410.1 Exploration licenses—Generally.

§ 3410.1-1 Lands subject to exploration licenses.

(a) Exploration licenses may be issued for:

(1) Lands administered by the Secretary that are subject to leasing, § 3400.2;

(2) Lands administered by the Secretary of Agriculture through the Forest Service or other agency that are subject to leasing, § 3400.2;

(3) Lands which have been conveyed by the United States subject to a reservation to the United States of the mineral or coal deposits, to the extent that those deposits are subject to leasing under § 3400.2; and

(4) Acquired lands set apart for military or naval purposes.

(b) No exploration license shall be issued for lands included in an existing coal lease.

§ 3410.1-2 When an exploration license is required.

(a) No person may conduct exploration activities for commercial purposes, including sale of data acquired during exploration, on lands subject to this subpart without an exploration license.

(b) An exploration license shall not be required for casual use for other than commercial purposes.

(c) Exploration activities conducted without an exploration license in violation of this section shall constitute a trespass, and shall be subject to the provisions of 43 CFR 9239.5-3(f).

§ 3410.2 Prelicensing procedures.

§ 3410.2-1 Application for an exploration license.

(a) Exploration license applications shall be submitted at the Bureau of Land Management State Office having jurisdiction over the lands covered in the application (43 CFR Subpart

1821). The applications shall be subject to the following requirements:

(1) No specified form of application is required.

(2) An area in a public land survey state for which an application is filed shall be described by legal description or, if on unsurveyed lands, by metes and bounds, in accordance with § 3471.1-1(d)(1) of this title. An application for an exploration license on acquired lands shall describe the area according to the description in the deed or document by which the United States acquired title in accordance with § 3471.1-1(d)(2) of this title.

(3) Each application shall contain three copies of an exploration plan which complies with the requirements of 30 CFR 211.10(a).

(4) Each application and its supporting documents shall be filed with a nonrefundable filing fee (43 CFR 3473.2).

(5) Exploration license applications shall normally cover no more than 25,000 acres in a reasonably compact area and entirely within one state. An application for an exploration license covering more than 25,000 acres must include a justification for an exception to the normal acreage limitation.

(b) Any person qualified to hold a lease under the provisions in § 3472.1 of this title may apply for an exploration license.

(c) Nothing in this subpart shall preclude the authorized officer from issuing a call for expressions of leasing interest in an area containing exploration licenses or applications for exploration licenses.

(d) Applicants for exploration licenses shall be required to provide an opportunity for other parties to participate in exploration under the license on a pro rata cost sharing basis.

(1) Immediately upon the filing of an application for an exploration license the applicant shall publish a "Notice of Invitation," approved by the authorized officer, once every week for 2 consecutive weeks in at least one newspaper of general circulation in the area where the lands covered by the license application are situated. This notice shall contain an invitation to the public to participate in the exploration under the license. Copies of the Notice of Invitation shall be filed with the authorized officer at the time of publication by the applicant, for posting in the proper Bureau of Land Management Office and for Bureau of Land Management's publication of the Notice of Invitation in the FEDERAL REGISTER.

(2) Any person who seeks to participate in the exploration program contained in the application shall notify the authorized officer and the applicant in writing within 30 days after the publication in the FEDERAL REGISTER. The authorized officer may require modification of the original exploration plan to accommodate the legitimate exploration needs of persons seeking to participate, and to avoid the duplication of exploration activities in the same area, or may notify the person seeking to participate that the person should file a separate application for an exploration license.

(e) An application to conduct exploration which could have been conducted as a part of exploration under an existing or recent coal exploration license may be rejected.

§ 3410.2-2 Environmental analysis.

(a) Before an exploration license may be issued, the authorized officer shall prepare an environmental assessment of the potential effects of the proposed exploration on the natural and socio-economic environment of the affected area. The environmental assessment shall be prepared in coordination with the Geological Survey review and approval of the exploration plan.

(b) If the authorized officer determines that an environmental impact statement is required by Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), a statement shall be prepared prior to the decision whether to issue the exploration license.

§ 3410.2-3 Cultural resources.

If lands listed or eligible for inclusion in the National Register of Historic Places contain cultural resources which might be affected by any activity under an exploration license, no exploration license for such land shall be authorized until after compliance with section 106 of the National Historic Preservation Act (16 U.S.C. 470f). Other cultural resource values shall also be protected pursuant to section 105 of the National Historic Preservation Act.

§ 3410.2-4 Threatened or endangered species.

If the proposed exploration would be likely to jeopardize the continued existence of a threatened or endangered species of fauna or flora or destroy or cause adverse modification to its critical habitat, no exploration license for such lands shall be issued. In making this determination the authorized officer shall consult any other surface management agency, and, if the presence of any threatened or endangeed species or its habitat is suspected or known, with the Fish and Wildlife Service in accordance with 50 CFR Part 402.

§ 3410.2-5 Surface management agency.

The authorized officer may issue an exploration license covering lands the surface of which is under the jurisdiction of any Federal agency other than the Bureau of Land Management only in accordance with those conditions prescribed by the surface management agency concerning the use and protection of the nonmineral interests in those lands.

§ 3410.2-6 Substantial disturbance.

No exploration license shall be issued if exploration under it would result in substantial disturbance to the natural land surface and improvements. Substantial disturbance means any disturbance which would cause significant and lasting degradation to the land or injury to improvements, or any disturbance other than that necessary to determine the nature of the overlying strata and the depth, thickness, shape, grade, quality or hydrologic conditions of the coal deposit.

§ 3410.3 Exploration licenses.

§ 3410.3-1 Issuance and termination of an exploration license.

(a) The authorized officer has the discretion to issue an exploration license or to reject the application therefor under this subpart.

(b) An exploration license shall become effective on the date specified by the authorized officer as the date when exploration activities may begin. An exploration license shall not be valid for more than two years from its effective date.

(c) The exploration plan approved by Geological Survey shall be attached and made a part of each exploration license.

(d) Subject to the continued obligation of the licensee and the surety company to comply with the terms and conditions of the exploration license, the exploration plan, and the regulations, a licensee may relinquish an exploration license for all or any portion of the lands covered by it. A relinquishment shall be filed in the Bureau of Land Management State Office in which the original application was filed. See 43 CFR Subpart 1821.

(e) An exploration license may be revoked by the authorized officer for noncompliance with its terms and conditions, the exploration plan, or the regulations, after the authorized officer has notified the licensee of the violation(s) in writing and the licensee has failed to correct the violation(s) within the period prescribed in the notice.

(f) Should a licensee request a modification to the exploration plan, the Mining Supervisor, with the concurrence of the authorized officer, and where appropriate the surface management agency, may approve the modification if geologic or other conditions warrant. If modification of the exploration plan could result in substantial disturbance to the natural land surface or damage to improvements, the authorized officer, after consultation with the Mining Supervisor, and where appropriate, the surface management agency, may adjust the terms and conditions of the license to mitigate such disturbance or damage. Unless the licensee concurs in the adjusted terms and conditions of the license, the modification of the exploration plan shall not be approved.

(g) When unforeseen conditions that could result in substantial disturbance to the natural land surface or damage to the environment or improvements are encountered, or when geologic or other physical conditions warrant a modification in the approved exploration plan, (1) the authorized officer, after consultation with the Mining Supervisor, and where appropriate, the surface management agency, may adjust the terms and conditions of the exploration license, or (2) the Mining Supervisor, after consultation with the authorized officer and where appropriate, the surface management agency, may direct adjustment in the exploration plan. If the licensee does not concur in the adjustment of the terms and conditions of the exploration license and exploration plan, he may, under 43 CFR Part 4, appeal the decision modifying the license, or he may relinquish the exploration license.

(h) Exploration licenses shall not be extended. Exploration operations may not be conducted after the exploration license has expired. The licensee may apply for a new exploration license as described in § 3410.3-1. A new exploration license may be issued simultaneously with the termination of the existing exploration license.

§ 3410.3-2 Limitations on exploration licenses.

(a) The issuance of exploration licenses for an area shall not preclude the issuance of a Federal coal lease under applicable regulations for that area. If such a lease is issued for lands included in an exploration license, the authorized officer shall cancel the exploration license on the effective date of the lease for those lands which are common to both.

§ 3410.3-3 Operating regulations.

The licensee shall comply with the provisions of the operating regulations of the Geological Survey (30 CFR Part 211). Copies of the operating regulations may be obtained from the Mining Supervisor. Authorized representatives of the Secretary and, where appropriate the surface management agency shall be permitted to inspect the premises and operations. The licensee shall allow the free ingress and egress of Government officers and other persons using the land under authority of the United States.

§ 3410.3-4 Surface protection and reclamation.

(a) The authorized officer shall include in each exploration license requirements and stipulations to protect the environment and associated natural resources and to ensure reclamation of the land disturbed by exploration.

(b) The approved exploration plan shall not authorize substantial disturbance of the natural land surface or damage to improvements.

(c) The authorized officer may issue an exploration license for Federal lands underlying private surface. The bond amount, when the exploration license will embrace such lands, shall reflect any agreement between the license applicant and the surface owner with respect to compensation for operations on the surface of the lands in the exploration license.

§ 3410.3-5 Bonds.

(a) Bonding provisions in subpart 3474 of this chapter apply to this subpart.

(b) Prior to issuing an exploration license, the authorized officer, after consultation with the Mining Supervisor and, where appropriate, the surface management agency and the surface owner, shall insure that the amount of the bond or bonds to be furnished is sufficient to assure compliance with the terms and conditions of the exploration license, exploration plan and regulations. In no event shall the amount of such bond be less than $5,000.

(c) Upon completion of exploration and reclamation activities that are in compliance with the terms and conditions of the exploration license, the exploration plan, and the regulations, or upon discontinuance of exploration operations and completion of such reclamation as may be needed to the satisfaction of the authorized officer and, where appropriate, the surface management agency, the authorized officer shall terminate the period of liability of the bond. Where the surface of the land being explored is privately owned, the authorized officer shall not terminate the period of liability under the bond until each surface owner has notified the authorized officer, in writing, that the surface has been reclaimed in a satisfactory manner. Should the licensee and any surface owner be unable to agree on the adequacy of the reclamation, the authorized officer shall make the final determination. The period of liability under the bond shall be terminated after it is determined that the terms and conditions of the exploration license, the exploration plan, and the regulations have been met.

§ 3410.4 Collection and submission of data.

(a) The authorized officer may require the applicant to collect ground and surface water data that are available to the licensee in the conduct of the approved exploration plan.

(b) In addition, the licensee shall furnish to the Mining Supervisor copies of all data (including, but not limited to, geological, geophysical, and core drilling analyses) obtained during exploration. The licensee shall submit such data and the methods by which the data were gathered, at such time and in such form as required by the Mining Supervisor. All data shall be considered confidential and not made public until the areas involved have been leased or until the Mining Supervisor determines that public access to the data would not damage the competitive position of the licensee, whichever comes first. (30 CFR 211.6; 43 CFR 2.20.)

§ 3410.5 Use of surface.

(a) A licensee shall be entitled to use for exploration purposes only the surface area of the lands in the exploration license that is authorized in the exploration plan.

(b) Operations under these regulations shall not unreasonably interfere with or endanger operations authorized under any other Act or regulation.

(c) The licensee shall comply with all applicable Federal, state and local laws and regulations, including the regulations in Group 3000 of this title, including Part 3460, and 30 CFR Part 211.

PART 3420—COMPETITIVE LEASING

Subpart 3420—Competitive Leasing

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AUTHORITY: 30 U.S.C. 181 et seq.; 30 U.S.C. 351-359; 30 U.S.C. 521-531; 30 U.S.C. 1201 et seq.; 42 U.S.C. 7101 et seq.; 43 U.S.C. 1701 et seq.; and 15 U.S.C. 631-644.

SOURCE: 44 FR 42615, July 19, 1979, unless otherwise noted.

Subpart 3420—Competitive Leasing

§ 3420.0-1 Purpose.

This subpart sets forth how the Department will conduct competitive leasing of rights to extract Federal coal.

§ 3420.0-2 Objectives.

The objectives of these regulations are to establish policies and procedures for considering development of coal deposits through a leasing system involving land use planning and environmental assessment processes; to ensure that an adequate supply of Federal coal is developed efficiently in compliance with laws, planning processes, and other safeguards designed to protect society and the environment; to ensure that coal deposits are leased at their fair market value; and to ensure that coal deposits are developed in consultation, cooperation, and coordination with the public, state and local governments, Indian tribes and involved Federal agencies.

§ 3420.0-3 Authority.

(a) The regulations in this part are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) The regulations in this part implement: (1) Primarily section 2(a) of the Mineral Leasing Act of 1920, as amended by Sections 2 and 3 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 201(a)); and (2) the Small Business Act of 1953, as amended (15 U.S.C. 631 et seq.).

§ 3420.0-6 Policy.

All leases except those issued under the provisions of Part 3430 of this title shall be issued competitively. There shall be special opportunity lease sales for qualified public bodies and for small businesses. Before each sale, the Department shall evaluate and compare the method or methods of mining that will achieve the maximum economic recovery of the resource. The Department shall receive fair market value for all coal leased.

§ 3420.1 Procedures.

§ 3420.1-1 General.

Competitive leasing is a component of the Federal coal management program and consists of four principal elements: comprehensive land use planning; establishment of regional leasing targets; tract delineation, ranking, selection, and scheduling; and lease sale. The application of unsuitability criteria pursuant to Subpart 3461 of this title for mining is an integral part of land use planning. All competitive lease sales under this subpart shall be initiated by the Secretary; applications for a competitive lease will be accepted only when filed under the provisions of Subpart 3425 of this chapter.

§ 3420.1-2 Lands subject to evaluation for leasing.

All lands subject to coal leasing under the mineral leasing laws are subject to evaluation under this subpart (43 CFR 3400.2).

§ 3420.1-3 Known Recoverable Coal Resource Areas.

No area outside a designated Known Recoverable Coal Resource Area (KRCRA) shall be leased under this subpart. Each KRCRA shall be formally designated by publication in the FEDERAL REGISTER.

§ 3420.1-4 Special leasing opportunities.

(a) The Secretary shall, under the procedures established in this subpart, including § 3420.4 of this title, reserve and offer a reasonable number of lease tracts through competitive lease sales open only to a restricted class of potential bidders. Except for the limitation on bidding contained in paragraph (b) of this section, all requirements in this subpart apply equally to special leasing opportunities, including the requirement that coal be leased at its fair market value.

(b) Special leasing opportunities shall be provided for two classes of potential lessees:

(1) *Public bodies.* (i) Only public bodies with a definite plan for producing energy for their own use or for their members or customers shall bid for leases designated as special leasing opportunities for public bodies. To qualify as a definite plan, a plan must clearly state the intended use of the coal and have been approved by the governing board of the public body submitting the plan. In the event an electric generating station which will produce energy for the public body is either jointly owned with or participated in by others, or both, the definite plan shall assure that the public body's proportionate part of the energy produced is utilized pursuant to this paragraph.

(ii) Each public body shall submit evidence of qualification (43 CFR 3472.2-5(a)) as part of its expression of leasing interest or upon submission of a bid if no expression of leasing interest is made.

(iii) The Secretary may designate, during the process of preparing a regional lease sale schedule, certain coal lease tracts for special leasing opportunities for public bodies only if a public body has submitted an expression of leasing interest under § 3420.4-2, requesting that the procedures of this section apply.

(iv) Leases issued under this section to public bodies may be assigned only to other public bodies, or to a person who will mine the coal on behalf of and for the use of the public body, or to a person for the limited purpose of creating a security interest in favor of a lender who agrees to be obligated to mine the coal on behalf of the public body.

(2) *Small businesses.* (i) When necessary to comply with the requirements of the Small Business Act, the Secretary shall designate a reasonable number of tracts for special leasing opportunities for businesses qualifying under 13 CFR Part 121.

(ii) Leases issued under this section may be assigned only to other small businesses qualifying under 13 CFR Part 121.

(c) Potential lessees qualifying for special leasing opportunities may participate in competitive lease sales not designated as special leasing opportunities and shall not be required to submit the evidence and information required specifically for a special leasing opportunity to participate.

§ 3420.1-5 General requirements for land use planning.

(a) The Secretary may not issue a lease for coal development under this part unless the lands containing the coal deposits have been included in a comprehensive land use plan or land use analysis and unless the sale is compatible with, and subject to, any relevant stipulations, guidelines and standards set out in that plan or analysis.

(b) (1) The Bureau of Land Management shall prepare comprehensive land use plans and land use analyses for lands it administers in accordance with either the standards in paragraph (c) of this section (but subject to the limitation in paragraph (e) of this section) or the provisions of § 3420.2 of this title.

(2) The Department of Agriculture or any other Federal agency with surface management authority over lands subject to leasing shall prepare comprehensive land use plans and land use analyses for lands it administers, in accordance with the standards in paragraph (c) of this section, or in accordance with such general regulations as it may adopt for the preparation of comprehensive land use plans, except as provided in the following paragraph.

(3) The Secretary may lease in an area where it is found either that there is no Federal interest in the surface or that the coal deposits in an area are insufficient to justify the costs of a Federal land use plan, if:

(i) The lands have been included in a comprehensive land use plan prepared, authorized or recognized by the state in which the lands are located, which shall govern Federal coal leasing recommendations affecting surface management except for those decisions for which the Secretary is responsible under the Surface Mining Control and Reclamation Act of 1977, and those recommendations that are in conflict with Federal law; or

(ii) The Secretary has completed, in accordance with the standards in paragraph (c) of this section or in accordance with Group 1600 of this title, a land use analysis.

(c) In order to qualify as the basis for issuing a lease, the comprehensive land use plan or land use analysis shall have:

(1) Considered a range of present and potential resource values and uses in accordance with the principles of multiple use and sustained yield;

(2) Used necessary professional disciplines in the analysis of resource development proposals;

(3) Identified critical environmental areas, if any;

(4) Reflected available, relevant data commensurate with anticipated conflicts in values and potential uses, and with likely levels and impacts of such uses;

(5) Developed and analyzed alternative proposals for multiple resource development and use;

(6) Analyzed the significance of values that would be affected by proposed actions in terms of local, regional and national perspectives, consistent with agency directives; and

(7) Been formulated in consultation with appropriate state and local governments and agencies and with the opportunity for public participation, including a public hearing if requested by an adversely affected party.

(d) The Secretary, surface management agency or planning entity within a state shall supplement any plan or analysis to be used for coal activity planning to conform to paragraph (c) of this section, if the plan:

(1) Does not contain an unsuitability assessment as provided in § 3420.2-3(c) of this title, the Secretary shall conduct such an assessment;

(2) Does not contain the results of the surface owner consultation required under § 3420.2-3(e) of this title, the Secretary shall complete such consultation;

(3) Does not assess the amount of coal recoverable by surface and deep mining operations, the Secretary, surface management agency or planning entity within a state shall make such an assessment; or

(4) Was not prepared in conformity with paragraph (c) of this section.

Any assessment or supplementation to the plan or analysis under this subsection shall provide the opportunity for public comment.

(e) After December 31, 1984, activity planning under § 3420.4 of this title may not be initiated with respect to any coal deposits administered by the Bureau of Land Management unless the area is included in:

(1) A comprehensive land use plan or land use analysis prepared in conformity with the regulations in Group 1600 of this title; or

(2) A comprehensive land use plan prepared under § 3420.1-5(b) (2) or (3)(i) of this title.

(f) In an area of Federal lands not covered by a completed comprehensive land use plan or scheduled for comprehensive land use planning, a member of the public may petition the appropriate Bureau of Land Management State Office for a land use analysis for coal related uses of the land as provided for in this group.

§ 3420.2 Land use plans prepared by the Bureau of Land Management.

§ 3420.2-1 Preparation of a land use plan.

The Bureau of Land Management shall prepare comprehensive land use plans (termed resource management plans) and land use analyses as provided in Group 1600 of this chapter.

§ 3420.2-2 Coal resource information.

A comprehensive land use plan or land use analysis shall contain an assessment of the amount of coal recoverable by either surface or underground mining operations or both.

§ 3420.2-3 Areas acceptable for further consideration for leasing.

(a) The major land use planning decision concerning the coal resource shall be the identification of areas acceptable for further consideration for leasing, which shall be identified by the screening procedures in paragraphs (b) through (e) of this section, and the additional planning considerations in paragraphs (f) and (g) of this section. Each screening procedure in paragraphs (b) through (e) of this section shall be applied only to those lands still identified as acceptable for further consideration for leasing after application of the screening procedure in each preceding subsection.

(b) (1) Only those areas subject to evaluation for leasing (§ 3420.1-2) that have high or moderate development potential coal deposits shall be considered acceptable for further consideration for leasing.

(2) This determination shall be based generally on the Geological Survey's Coal Resource Occurrence-Coal Development Potential (CRO/CDP) maps. If CRO/CDP maps are not available, the Geological Survey shall use other available data sources to estimate coal development potential for the surface management agency. If other data sources are used, the same criteria for designating coal deposits as high or moderate development potential shall be used. Coal companies, state governments and the general public are encouraged to submit information to the Geological Survey for use in the CRO/CDP mapping program at any time.

(3) Coal companies, state governments, and members of the public may submit non-confidential coal geology and economic data during the earlier inventory phase of planning to the Bureau of Land Management State Office conducting the planning. Where such information is determined to indicate significant development potential for an area not shown to be of moderate or high development potential in the CRO/CDP maps, the area shall be considered moderate development potential and shall not be excluded from further consideration and application of the remaining screens in the land use planning process.

(c) The authorized officer shall, using the unsuitability criteria and procedures set out in Subpart 3461, review Federal lands to assess where there are areas unsuitable for all or certain stipulated methods of coal mining. The unsuitability assessment shall be consistent with any decision of the Office of Surface Mining Reclamation and Enforcement to designate lands unsuitable or to terminate a designation in response to a petition.

(d) Multiple land use decisions shall be made which may eliminate additional coal deposits from further consideration for leasing to protect other resource values of a locally important or unique nature not included in the unsuitability criteria discussed in paragraph (c) of this section.

(e) (1) While preparing a comprehensive land use plan or land use analysis, the Bureau of Land Management shall consult with all surface owners who meet the criteria in paragraphs (1) and (2) of § 3400.0-5(pp) of this title, and whose lands overlie coal deposits, to determine preference for or against mining by other than underground mining techniques.

(2) For the purposes of this paragraph, any surface owner who has previously granted written consent to any party to mine by other than underground mining techniques shall be deemed to have expressed a preference in favor of mining. Where a significant number of surface owners in an area have expressed a preference against mining those deposits by other than underground mining techniques, that area shall be considered acceptable for further consideration for leasing only for development by underground mining techniques. In addition, the area may be considered acceptable for further consideration for leasing for development by other than underground mining techniques if there are no acceptable alternative areas available to meet the regional leasing target.

(3) An area eliminated from further consideration by this subsection may be considered acceptable for further consideration for leasing for mining by other than underground mining techniques if:

(i) The number of surface owners who have expressed their preference against mining by other than underground methods is reduced below a significant number because (A) surface owners who expressed their preference against such mining subsequently have given written consent for such mining, or (B) the ownership of the surface estate of qualified surface owners who expressed such a preference is transferred to surface owners who are not qualified surface owners or to qualified surface owners who subsequently provide consent to such mining; and

(ii) The land use plan is amended accordingly.

(f) The land use plan may provide for impact thresholds as described in Group 1600 of this title to manage coal development. Where a threshold level would be reached, the Bureau of Land Management shall halt, suspend or condition further consideration of the areas otherwise considered acceptable for further consideration for leasing.

(g) Where the areas acceptable for further consideration for leasing within a planning unit, in the judgment of the local land manager clearly contain more reserves than are likely to be needed for leasing until the evaluation of the plan conducted under § 1601.5-9 of this title, or analysis, the plan or analysis may specify broad areas greater than 60,000 acres for earliest consideration for leasing, if any is to be done.

[44 FR 42615, July 19, 1979, as amended at 44 FR 56339, Oct. 1, 1979]

§ 3420.2-4 Hearing requirements.

(a) The Bureau of Land Management shall conduct a public hearing on the proposed comprehensive land use plan or land use analysis if it involves the potential for coal leasing before it is adopted if such a hearing is requested by any person who is or may be adversely affected by the adoption of the plan. A hearing conducted under Group 1600 of this chapter may fulfill this requirement.

(b) The authorized officer conducting the hearing shall:

(1) Publish a notice of the hearing in a newspaper of general circulation at least once in each of two consecutive weeks in the affected geographical area;

(2) Provide an opportunity for testimony by anyone who so desires; and

(3) Record the proceedings of the hearing.

§ 3420.2-5 Consultation with Federal surface management agencies.

Where a Federal surface management agency other than the Bureau of Land Management administers limited areas overlying Federal coal within the boundaries of a comprehensive land use plan or land use analysis being prepared by the Bureau of Land Management, the Bureau of Land Management shall consult with the other agency to obtain its recommendations as to the acceptability for further consideration for leasing of the land the other agency administers.

§ 3420.2-6 Consultation with states and Indian tribes.

Before adopting a comprehensive land use plan or land use analysis that makes any formal assessment of lands acceptable for further consideration for leasing, the Bureau of Land Management or other surface management agency shall consult with the state Governor and the state agency charged with the responsibility for maintaining the state's unsuitability program (43 CFR 3461.4-1). Where a tribal government administers areas within or near the boundaries of a comprehensive land use plan or land use analysis being prepared by the Bureau of Land Management, the Bureau shall consult with the tribal government to obtain its recommendations concerning the unsuitability assessment.

§ 3420.2-7 Identification of lands as acceptable for further consideration.

Identification of lands as acceptable for further consideration for leasing will be made in the adoption of a comprehensive land use plan or land use analysis. Any lands identified as acceptable may be further considered for leasing under § 3420.4 of this title.

§ 3420.3 Regional production goals and leasing targets.

§ 3420.3-1 General.

(a) (1) The coal production regions to which this section applies shall be set out by notice in the FEDERAL REGISTER. They may be changed, or their boundaries altered, by publication in the FEDERAL REGISTER.

(2) If any region so established, wholly east of the 100th meridian, contains insufficient Federal coal deposits to justify treating coal leasing in the entire region through activity planning under § 3420.4 of this title, such a notice may prescribe areas within such a region in which activity planning is unlikely to occur in the foreseeable future and in which applications to lease shall be accepted under § 3425.1-5 of this title.

(b) The Secretary in consultation with the Secretary of the Department of Energy, affected state Governors, Indian tribes and other concerned parties shall biennially adopt regional coal production goals provided by the Department of Energy, adjusted as provided in §§ 3420.3-2 (e) and (f) of this title. The Secretary shall also establish regional leasing targets for the purposes of setting Departmental priorities, aiding the states in planning for potential future impacts of coal development, and supplying the guidance for establishing the amount of coal to be offered through proposed lease sale schedules.

§ 3420.3-2 Evaluation of coal needs.

This section sets out the process the Department shall follow in establishing regional coal needs and appropriate coal management actions.

(a) Proposed regional production goals stating the desired levels of production of various types of coal shall be established by the Department of Energy consistent with the procedures as agreed to by the Secretaries of Energy and of the Interior on production goals for energy resources on Federal lands.

(b) The Secretary shall, within 60 days of receipt of the proposed production goals, review and comment thereon to the Secretary of Energy. The Secretary shall inform the Secretary of Energy of potential policy conflicts or problems concerning, but not limited to:

(1) The Department's responsibility for the management, regulation, and conservation of natural resources; (2) the capabilities of Federal lands and Federal coal resources to meet the proposed goals; and (3) the national need for coal resources balanced against the environmental consequences of developing these resources.

(c) The Secretary of Energy shall issue final production goals not more than 30 days after receipt of the Secretary's comments. In establishing or revising regional lease sale schedules, the Secretary shall be guided by these final production goals of the Department of Energy.

(d) The Department of Energy's final production goals and related production statistics of the Department of the Interior shall be provided to the regional coal teams. Each team shall consider the regional situation and recommend adjustments to the relevant regional production goal based on such factors as (1) public comment received in writing or in hearing(s) held by the team in the region, (2) state government, Bureau of Land Management State Office, Indian tribe and regional development policies, (3) administrative capacity to satisfy the indicated level of leasing based on the Department of Energy's final production goals, and (4) other information available to the regional coal teams which they believe should receive consideration by the Secretary in his review of the Department of Energy's final regional production goals. Notice of hearings held under this subsection shall be published in the FEDERAL REGISTER and in at least one newspaper of general circulation in each state in the region.

(e) (1) The Secretary shall consider the findings and recommendations of the regional coal teams and other relevant information and review the Department of Energy's final regional production goals to determine whether any adjustments thereto are necessary.

(2) The Secretary shall also establish preliminary regional leasing targets, based on: the Department of Energy's final regional production goals; recommendations of the regional coal teams about feasible regional leasing targets; and other relevant information. In establishing the preliminary regional leasing targets, the Secretary shall evaluate, at a minimum: the expected and potential production for existing coal leases; noncompetitive coal leases, non-Federal coal holdings and expected non-Federal (including Indian tribal) leasing; and the level of competition within the coal region.

Consideration shall also be given to the relative economic, social and environmental differences among the coal production regions, the comparative environmental and other benefits of developing Federal rather than non-Federal coal, and other factors as the Secretary deems appropriate. Preliminary regional leasing targets shall:

(i) Reflect the difference between desired levels of production in the region and projected supplies, including supplies of specific types of coal;

(ii) Be set out on the basis of coal reserve tonnages;

(iii) Be for 4 years; and

(iv) Take into consideration the coal that would come into production as a result of Federal leasing.

(f) (1) The Secretary shall either adopt the Department of Energy's final regional production goals or make the necessary adjustments thereto and then adopt the goals, as adjusted. Upon adoption of the Department of Energy's final regional production goals with or without adjustments, such goals, together with the reasons for adjustments, if any, shall be transmitted to the Secretary of Energy.

(2) The preliminary regional leasing targets and regional production goals as adopted with or without adjustment by the Secretary shall be published simultaneously in the FEDERAL REGISTER and in a newspaper of general circulation in each state in the region.

(g) In the process of adopting the Department of Energy's final regional production goals and establishing preliminary regional leasing targets, the Secretary may call a national conference of the regional coal teams to review their recommendations.

(h) In addition to participating in the regional hearings specified in subsection (d) of this section, the coal and utility industries, agricultural and community organizations, environmental groups Indian tribes and other concerned parties shall be afforded the opportunity to submit their views on the regional production goals, as adopted by the Secretary, and on the preliminary regional leasing targets by responding to the notice in the FEDERAL REGISTER as prescribed in paragraph (f) of this section, and, if requests are received, from the public through additional hearing(s).

(i) The Secretary shall consult with the state Governors seeking their views concerning the Department of Energy's final regional production goals, those goals as adopted by him, and the preliminary leasing targets. The Secretary shall particularly seek the Governors' views regarding the relationship between the preliminary regional leasing targets and potential social and economic effects on the state and region.

(j) Based on the consultation with state Governors, consideration of the Department of Energy's final regional production goals, as adopted, and the comments received on these goals and the preliminary regional leasing targets, and the comments received, the Secretary shall adopt final regional leasing targets for the guidance of regional coal teams as set out in § 3420.3-3 of this title.

(k) Two years after the adoption of each new regional lease sale schedule, the Secretary shall review the final regional leasing target which applies to that schedule through the process set out in paragraphs (b) through (j) of this section and, if necessary, revise the final regional leasing target for the final 2 years of the sale schedule. If there is a new regional leasing target requiring a major change in the tracts proposed for sale, a 2 year supplement to the regional lease sale environmental impact statement shall be prepared.

(l) The regional leasing targets established for the regional lease sales in 1981 or 1982 may be established by the Secretary based on the analysis presented in the Final Environmental Statement, Federal Coal Management Program, and related analyses without regard to the provisions of paragraphs (a) through (j) of this section.

[44 FR 42615, July 19, 1979; 44 FR 56340, Oct. 1, 1979]

§ 3420.3-3 Use of final regional leasing targets.

(a) The final regional leasing targets shall guide the regional coal teams in the preliminary delineation, ranking, selection and scheduling of tracts for lease sale in the coal production regions.

(b) The final regional leasing targets do not represent final leasing decisions and may, with the approval of the Secretary, be revised by the regional coal teams, prior to the adoption of a lease sale schedule by the Secretary, as a result of consideration of national needs and social, economic, and environmental factors that are taken into account during the tract ranking, selection, and scheduling process. Circumstances justifying a revision of a final regional leasing target may include the following:

(1) Expressed industry interests in coal development in the region not reflected in the final regional leasing target;

(2) Expressed interests and reasons therefore from a community or group of communities for or against coal development in the adjacent and surrounding areas;

(3) Expressed interests for special opportunity sales;

(4) Adjustments indicated by the success or failure of the scheduled lease sales in meeting the final regional leasing targets;

(5) An expressed desire on the part of the state or local government to shift or disperse development patterns in the region or sub-region by additional leasing, reductions in leasing, or shifts in locations of lease sales; and

(6) Results from the analyses contained in the regional lease sale environmental statement.

(c) Whether or not the regional coal team proposes a revision of the relevant final regional leasing target, one alternative analyzed in the regional lease sale environmental impact statement shall be the final leasing target established pursuant to § 3420.3-2(j) of this title.

(d) Where a regional coal team elects to propose a revision of the relevant final regional leasing target during the selection of tracts proposed for lease sale and the design of the recommended regional lease sale schedule, the team shall clearly set out the proposed revision and the reasons therefor in the regional sale environmental impact statement and request public comment on the proposed revision in the public participation process for the regional lease sale environmental impact statement. Such a proposed revision shall not become effective unless and until the Secretary approves the recommended alternative leasing target and schedule.

§ 3420.3-4 Environmental analysis.

An environmental assessment in the form of an updating of the most current environmental impact statement on the Federal coal management program shall be conducted by the Secretary if he:

(a) Determines that the regional production goals and regional leasing targets established in accordance with §§ 3420.3-2(e) and 3420.3-2(l) vary significantly from those analyzed in the most current version of the coal programmatic statement; or

(b) Determines that the tracts available for selection in the next round of the tract ranking, selection, and scheduling process (§ 3420.4-4) in any given region(s) may generate significantly different levels or types of environmental impacts than were anticipated in the most current coal programmatic environmental statement.

§ 3420.4 Activity planning—The leasing process.

§ 3420.4-1 Area identification process.

(a) This section describes the process for identifying, ranking, selecting, and scheduling lease tracts after land use planning has been completed. This process constitutes the "activity planning" aspect of the coal management program. Activity planning may occur where areas acceptable for further consideration for leasing have been identified by land use planning completed consistent with the provisions of § 3420.1-5 of this title.

(b) Split estate land otherwise acceptable for further consideration for leasing shell, upon verfication of a refusal to consent received from a qualified surface owner under § 3427.2 of this title, be deleted from further activity planning.

§ 3420.4-2 Expressions of leasing interest.

(a) A call for expressions of leasing interest may be made after areas acceptable for further consideration for leasing have been identified by land use planning completed consistent with the provisions of § 3420.1-5 of this title. The call may be made in any one, several, or all of the above mentioned areas when the Secretary determines, using the regional production goals and regional leasing targets established under § 3420.3-2 of this title, that additional Federal coal leasing may be needed to meet local, state, or national needs in the foreseeable future.

(b) Each call for expressions of leasing interest shall be published as a notice in the FEDERAL REGISTER and in at least 1 newspaper of general circulation in each affected state. This notice of request shall specify the area or areas involved, information required, the time period within which expressions may be submitted, where to write for further information and where to submit expressions.

(c) The expressions of leasing interest process provided for in this subpart is not exclusive. Any individual, business entity, governmental entity, or public body may participate in the general public participation opportunities and procedures that are part of the land use planning process which precedes the call for expressions of leasing interest.

(d) Entities qualifying for public body leasing opportunities as defined in § 3420.1-4(b)(1) of this title shall make their intentions known through submission of expressions of leasing interest when called for by the Secretary.

(e) Any expressions of leasing interest may include supportive nonproprietary data. Such data may include, but are not limited to, location and quantities and types of coal (including coking coal) desired, time frames for development, proposed uses of coal, technical coal data, commitments between private surface and coal owners and adjacent land owners or lessees, and basic development proposals. Expressions which identify quantity and quality of coal and timing of need without specifying a location shall be given as serious consideration in activity planning as those that specify a location. Data which are considered proprietary shall not be submitted as part of an expression of leasing interest.

(f) All information submitted under this subpart shall be available for public inspection and copying upon request.

[44 FR 42615, July 19, 1979, as amended at 44 FR 56340, Oct. 1, 1979]

§ 3420.4-3 Preliminary tract delineation.

(a) Preliminary tracts shall be delineated for analysis during ranking, selection, and scheduling. Although only unleased Federal coal deposits can be included in a lease sale, for the purpose of analysis, the preliminary tracts may include non-Federal and leased Federal as well as unleased Federal coal reserves and may include existing mining operations.

(b) In addition to expressions of leasing interest, factors to be considered in delineating preliminary tracts may include, but are not limited to:

(1) Technical coal data, including reserve tonnage, rank, sulfur content, seam thickness, and ratio of overburden to recoverable coal;

(2) Conservation considerations, including preliminary indications of maximum economic recovery, mixed land ownership patterns, and the potential formation of logical mining units; and

(3) Surface ownership, including surface owners' preferences expressed in consultation during land use planning, and the existence of written consents from qualified surface owners and their terms.

(c) The potential tracts shall be delineated in accordance with § 3471.1-2 of this title and by seam(s) or coal bed(s). More than one potential tract may be delineated for a specific coal bed or potential mining unit.

(d) When public bodies have submitted expressions of leasing interest, tracts shall be delineated when and where technically feasible for public body special leasing opportunities in accordance with § 3420.1-4 of this title.

(e) In cooperation with the Small Business Administration, tracts may be delineated when and where technically feasible for small business special leasing opportunities in accordance with § 3420.1-4 of this title.

(f) Other tracts to be used in a lease or fee exchange (43 CFR Subparts 3435, 3436, and 3437) may be delineated.

(g) A tract profile shall be formulated for each preliminary tract. The profile shall include:

(1) A summary of the information used in the delineation of the tract, and

(2) A site-specific environmental inventory and preliminary analysis.

(h) The regional coal team shall determine the location, priority, and timing of both preliminary tract delineation and site-specific environmental inventory and analysis.

§ 3420.4-4 Regional tract ranking, selection, and scheduling.

(a) If there is a final regional leasing target adopted under § 3420.3-2(j) of this title for any given region, tracts shall be ranked and selected, and a proposed lease sale schedule shall be prepared pursuant to this section. Tracts may also be ranked for other coal management purposes, such as exchanges under Subparts 3425, 3436 and 3437 of this title.

(b) (1) The ranking classes shall be those of high, medium and low desirability. Three major categories of considerations shall be used in tract ranking: coal economics; impacts on the natural environment; and socio-economic impacts. The subfactors to be considered under each category shall be those determined by the regional coal team as appropriate for that region, and shall be published in the regional lease sale environmental impact statement required by § 3420.4-5 of this title. The regional coal team shall defer the ranking of any given preliminary tract for which they determine there is generally insufficient data.

(2) The regional coal teams may modify tract boundaries being ranked in order to reflect analyses conducted in developing the tract profile.

(3) The regional coal team shall solicit the recommendations of Federal and state agencies having appropriate expertise. These Federal agencies shall include but are not limited to the Department of Energy, the Fish and Wildlife Service, the Geological Survey, and the Office of Surface Mining Reclamation and Enforcement, and any Federal agency that administers the surface of any lands in a preliminary tract.

(4) Where Federal leasing decisions are likely to have impacts on lands held in trust for an Indian tribe, the regional coal management team shall solicit the recommendations of the tribe.

(c) (1) Upon completion of tract ranking, the regional coal team shall select tracts for inclusion in alternative proposed lease sale schedules or for other management purposes to be forwarded to the Secretary for final selection.

(2) The regional coal team may adjust the tract ranking in the selection process, and select tracts for scheduling from the tract ranking, using considerations including: (i) The compatibility of coal quality, coal type and market needs; (ii) cumulative environmental and socioeconomic impacts; (iii) the compatibility of reserve size and demand distribution for tracts; (iv) public opinion; (v) avoidance of future by-pass situations; and (vi) special leasing opportunity requirements.

(3) The regional coal team shall identify all those combinations of tracts which they feel may be equally desirable to meet the applicable final regional leasing target. In addition to tract combinations designed to meet the leasing target, the team may recommend tract combinations representing alternative leasing targets based on its analysis of environmental impacts or revised regional coal demand, but the reasons for all such recommendations shall be thoroughly documented.

(4) All alternative tract selections shall be subject to any restrictions placed on leasing actions by the comprehensive land use plans or land use analyses that include the tracts.

(d) A notice of intent to rank tracts shall be published in the FEDERAL REGISTER and selected newspapers of general distribution within the region before the ranking process begins. The notice shall contain a description of the tracts to be ranked and procedures under which any interested parties may become involved in the process.

(e) The results of the process, including the tract rankings, the tracts selected, the proposed schedule, and the list of ranking criteria used shall be published in the regional lease sale environmental impact statement prepared on the proposed lease sale schedule and its alternatives (§ 3420.4-5). Detailed information on each of the tracts ranked will be available for inspection in the Bureau of Land Management State Offices that have jurisdiction over lands within the coal production region (43 CFR Subpart 1821). Those parties interested in commenting on the results of the tract ranking, selection and scheduling process shall have the opportunity to do so in the environmental impact statement process, prior to any final decision by the Secretary to adopt a regional sale schedule including any of the selected tracts.

(f) Upon the close of the comment period on the draft environmental impact statement, the regional coal team shall analyze the comments and make any revisions in the ranking, selection and scheduling analysis they feel are necessary. The team shall then forward their final recommendations of alternatives for a regional leasing schedule to the Director, consistent with § 3400.4(c) of this title.

(g) The tract ranking, selection, and scheduling process shall normally be repeated every 4 years with an update performed every 2 years, if needed, in accordance with the Secretary's determination, based on the regional production goals and regional leasing targets, that the regional lease sale schedule should be revised. The Secretary may, in consultation with the Governor(s) of the affected state(s) and surface management agencies, initiate or postpone the process to respond to considerations such as major planning updates, new preliminary tract delineations, and increases or decreases in regional leasing targets.

§ 3420.4-5 Environmental analysis.

(a) In conjunction with the tract ranking, selection and scheduling process, a regional environmental impact statement on the alternative lease sale schedules shall be prepared in accordance with the provisions of the National Environmental Policy Act. The statement shall consider both:

(1) The site-specific potential environmental impacts of each tract being considered for lease sale; and

(2) The intraregional cumulative environmental impacts of the proposed leasing action and alternatives, and other coal development activities.

(b) The regional lease sale environmental impact statement prepared for the original regional lease sale schedule shall be updated if the Secretary makes any significant alterations to that schedule not considered in the original environmental impact statement.

(c) The procedures for completion and contents of such statement are further treated in §§ 3400.4(c) and 3420.4-4 of this title.

§ 3420.4-6 Public meetings on proposed tracts.

After the draft regional lease sale environmental impact statement has been completed on alternative lease sale schedules, public meetings shall be held in the region to announce and discuss the results of the ranking, selection, and scheduling process; the alternative lease sale schedules; and the potential impacts, including proposed mitigation measures.

§ 3420.5 Final consultations.

§ 3420.5-1 Timing of consultation.

Following the release of the final regional lease sale environmental impact statement, and prior to adopting a regional lease sale schedule, the Secretary shall engage in formal consultation as specified in §§ 3420.5-2 through 3420.5-5 of this title.

§ 3420.5-2 Consultation with surface management agencies.

(a) The Secretary, for any proposed lease tract containing lands the surface of which is under the jurisdiction of any agency other than the Department, shall request that the agency: (1) consent, if it has not already done so, to the issuance of the lease (43 CFR 3400.3-1), and (2) if it consents, prescribe the terms and conditions the Secretary will impose in any lease which the head of the agency requires for the use and protection of the nonmineral interests in those lands.

(b) The Secretary may prescribe additional terms and conditions that are consistent with the terms proposed by the surface management agency to protect the interest of the United States and to safeguard the public welfare.

§ 3420.5-3 Consultation with Governors.

(a) The Secretary shall consult the Governor of the state in which any tract proposed for sale is located. The Secretary shall give the Governor a specified period of time to comment, not less than 30 days nor more than 60 days, before publishing a notice of sale for any tract within the state.

(b) When a tract proposed for lease sale within the boundaries of a National Forest would, if leased, be mined by surface mining methods, the Governor of the state in which the land to be leased is located shall be so notified by the Secretary. If the Governor fails to object to the lease sale proposal in 60 days, the Secretary may publish a notice of sale, including that tract. If, within the 60 day period, the Governor, in writing, objects to the lease sale proposal, the Secretary may not publish a notice of sale for that tract. Publication of the notice of sale shall be held in abeyance for 6 months from the date that the Governor objects. The Governor may, during this six-month period, submit a written statement of reasons why the tract should not be proposed for lease sale, and the Secretary shall, on the basis of this statement, reconsider the lease sale proposal.

§ 3420.5-4 Consultation with Indian tribes.

The Secretary shall consult with any Indian tribe which may be affected by the adoption of the proposed regional lease sale schedule. The Secretary shall give the tribe a specified period, not less than 30 days nor more than 60 days, in which to comment prior to adopting a lease sale schedule.

§ 3420.5-5 Consultation with the Attorney General.

The Secretary shall consult with and give due consideration to the advice of the Attorney General before the adoption of the proposed regional lease sale schedule. The Secretary shall provide not less than 30 days nor more than 60 days in which the Attorney General may advise the Secretary prior to adopting a lease sale schedule.

§ 3420.6 Qualified surface owner consent considerations.

§ 3420.6-1 Receipt and consideration of written consent.

(a) Prior to making a final decision on a regional lease sale schedule, the Secretary shall consider what written consents have been received for those lease tracts under consideration for inclusion in the regional lease sale schedule, in accordance with the split estate leasing provisions of this title.

(b) All other ranking, selection and scheduling factors being nearly equal, those tracts for which acceptable written consents have been received shall be chosen for inclusion in the regional coal lease sale schedule over those for which no acceptable written consents have yet been received.

§ 3420.6-2 Announcement of tracts under consideration.

With the release of the final regional lease sale environmental impact statement, the Secretary shall publish an announcement in the FEDERAL REGISTER containing:

(a) A legal description of all tracts under consideration for inclusion in the regional lease sale schedule, and

(b) The deadline for anyone to submit the written consent of any qualified surface owner for any tract under consideration by the Secretary for selection for inclusion in the regional lease sale schedule.

§ 3420.7 Adoption of final regional lease sale schedule.

§ 3420.7-1 Announcement.

Following completion of the requirements of §§ 3420.5 and 3420.6 of this title the Secretary shall announce a final regional lease sale schedule. The announcement shall be published in the FEDERAL REGISTER and contain a legal description of each tract included in the lease sale schedule and the date when each tract has been tentatively scheduled for sale. Notice of this announcement shall be published in at least 1 newspaper of general distribution in each state within the region for which the regional lease sale schedule is adopted.

§ 3420.7-2 Revision.

(a) The Secretary may revise either the list of tracts included in the schedule or the timing of the lease sales in accordance with any alternatives which were considered in the regional lease sale environmental impact statement and during consultation under § 3420.5 of this title, if such revision would be in the public interest. Notice of any such revision shall be published in the same manner as the announcement of the original regional lease sale schedule.

(b) Any regional lease sale schedule may be updated or replaced as a result of a new regional tract ranking, selection, and scheduling effort conducted in accordance with the provisions of § 3420.4-4 of this title.

Subpart 3422—Lease Sales

§ 3422.1 Economic evaluation.

§ 3422.1-1 Mineral evaluation and comments on fair market value and maximum economic recovery.

After announcement of the regional lease sale schedule, and in any case not less than 30 days prior to the publication of a notice of sale, the authorized officer shall:

(a) Solicit public comment on the fair market value of the tract or tracts proposed to be offered. Such solicitation shall ask for comments on these items which affect the appraisal such as the terms and conditions of similar market transactions, the quality and extent of the coal resource, the price that the mined coal would bring in the market place, the cost of producing the coal, the interest rate at which anticipated income streams should be discounted, depreciation and other accounting factors, the value of the surface estate (if private surface), the mining method or methods which would achieve maximum economic recovery of the coal and any other items which might affect the appraisal of the tract or tracts. Such comments will be solicited for a period of not less than 30 days. The authorized officer shall forward a copy of all comments to the Geological Survey.

(b) Request from the Geological Survey and evaluation including a coal resource economic value (CREV) and a maximum economic recovery (MER) determination. Prior to issuance of the sale notice, the Geological Survey shall forward this evaluation to the authorized officer. This evaluation shall include the coal resource economic value, mining method evaluation, estimated recoverable reserves by bed, preliminary MER indication, coal quality assessment, royalty and lease bond recommendations; an estimate of reclamation fees that mining the tract would generate, and an evaluation of the public comments on fair market value and maximum economic recovery.

(c) Proprietary data marked as confidential may be submitted to the authorized officer in response to the solicitation of public comments. Data so marked shall be treated in accordance with the Freedom of Information Act.

§ 3422.1-2 Estimated fair market value determination.

(a) When the mineral evaluation and accompanying information is received from the Geological Survey, the authorized officer shall estimate the fair market value of the tract proposed for lease sale. Minimum bonus bids shall be not less than $25 per acre. When the estimated fair market value has been determined, the authorized officer shall inform the Geological Survey of the determination.

(b) The fair market value determinations for public body lease sales shall be derived in the same manner as for other lease sales.

§ 3422.2 Notice of sale.

(a) Prior to the lease sale, the authorized officer shall publish a notice of the proposed sale in the FEDERAL REGISTER and in a newspaper(s) of general circulation in the county or equivalent political subdivision in which the tracts to be sold are situated. The newspaper notice shall be published not less than once a week for 3 consecutive weeks. Such notice shall also be posted in the Bureau of Land Management State Office and shall be mailed to any surface owner of lands noticed for sale. The lease sale shall not be held until at least 30 days after such posting in the State Office.

(b) The notice shall:

(1) List the time and place of sale, the type of sale, bidding method (whether by sealed or oral bid), rental, and the description of the tract(s) being offered and the minimum acceptable bids to be considered;

(2) Contain the pre-lease indication of maximum economic recovery by bed of coal to be mined as a guide to bidders, even though this determination would not be a lease term, and would be subject to revision in the formal MER determinations to be made in mine plan approval; and

(3) Contain information on where a detailed statement of the terms and conditions of the lease(s) which may result from the lease sale may be obtained.

(c) The detailed statement of the terms and conditions of the lease(s) offered and bidding instructions for sale shall:

(1) Contain an explanation of the manner in which the bids may be submitted;

(2) Contain a statement that, if sealed bids are submitted, they may not be modified or withdrawn unless the modifications or withdrawals are received prior to the time fixed for opening the bids;

(3) Contain a statement that, if the sale is by oral bid, sealed bids may also be submitted;

(4) Contain a warning to all bidders concerning 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders;

(5) Specify that the Secretary reserves the right to reject any and all bids and the right to offer the lease to the next highest qualified bidder if the successful bidder fails to obtain the lease for any reason;

(6) Specify that, if any bid is rejected, any deposit shall be returned;

(7) Contain a notice that each bid shall be accompanied by the bidder's qualifications (43 CFR 3472.2-2);

(8) Contain a notice to bidders that the winning bidders shall have to submit the information required by the Attorney General for post-sale review (43 CFR 3422.3-4);

(9) Require the bidder to pay one fifth of the cash bonus bid;

(10) If appropriate, contain a copy of any written consent given by a qualified surface owner and its terms, including payments which the high bidder, if not the holder of the consent, will have to make;

(11) If appropriate, contain a notice that bidders shall file a statement that all information they hold relevant to written consents affecting any area offered in the sale in which the bid is submitted has been filed with the proper Bureau of Land Management State Office (43 CFR Subpart 1821) in accordance with the provisions of Subpart 3427 of this title; and

(12) Contain a copy of the proposed lease, including all terms and conditions, and including all stipulations concerning compliance with the requirements of the Surface Mining Control and Reclamation Act to be made a part of the lease.

(d) The successful bidder, if any, shall reimburse the Government for the cost of publishing the notice of sale as a condition of lease issuance.

§ 3422.3 Sale procedures.

§ 3422.3-1 Conduct of sale.

(a) (1) Sealed bids shall be received only until the hour on the date specified in the notice of competitive leasing; all sealed bids submitted after that hour shall be returned. The authorized officer shall read all sealed bids, and shall announce the highest bid.

(2) If the announced procedure is to receive sealed bids followed by oral bids, the authorized officer conducting the sale shall open and read the sealed bids, after which the oral bidding shall begin at the level of the highest sealed bid. Only those submitting sealed bids may offer oral bids. After the oral bidding has ceased, the highest bid shall be announced.

(3) No decision to accept or reject the high bid will be made at the time of sale.

(b) A sale panel shall convene to determine: (1) If the high bid was properly submitted; (2) if it reflects the fair market value of the tract; and (3) whether the bidder is qualified to hold the lease. The recommendations of the panel shall be sent to the authorized officer who shall make the final decision to accept a bid or reject all bids. The successful bidder shall be notified in writing. The Department reserves the right to reject any and all bids regardless of the amount offered, and shall not accept any bid that is less than fair market value. The authorized officer shall notify any bidder whose bid has been rejected and include in such notice a statement of the reason for the rejection. The Department reserves the right to offer the lease to the next highest qualified bidder if the successful bidder fails to execute the lease, or is for any reason disqualified from receiving the lease.

(c) Each sealed bid shall be accompanied by a certified check, cashier's check, bank draft, money order, certificate of bidding rights, personal check or cash for one-fifth of the amount of the bonus, and a qualifications statement over the bidder's own signature with respect to citizenship and interests held, as prescribed in § 3472.2-2 of this title. A high oral bidder shall tender by certified check, cashier's check, bank draft, money order, certificate of bidding rights, personal check or cash at the close of bidding any additional amount necessary to bring the amount tendered with his sealed bid up to one fifth of his oral bid.

§ 3422.3-2 Other bidding systems.

(a) The use of intertract bidding competition is authorized when, and if, the Bureau of Land Management and the Geological Survey in consultation with the Department of Energy determine it is needed in the public interest. The authorization to use intertract bidding competition does not preclude the use of any other form of competitive bidding procedures.

(b) In intertract bidding competition, the winning bidders, if any, are selected by determining first the tract with the single highest bid per ton of reserves among all tracts, then the tract with the second highest bid, and so forth. The bids may be weighted to compensate for differences in the physical quality of the coal in such tracts. If leases are awarded they shall be awarded for tracts proceeding in this sequence until the total reserve tonnage sought to be leased in that sale has been reached. Tracts receiving lower bids per ton shall not be leased as a result of a bid submitted in that sale.

§ 3422.3-3 Unsurveyed lands.

If the land is unsurveyed, the successful bidder shall not be given notice to comply with the requirements of § 3422.4 of this title for lease issuance until the land has been surveyed as provided in § 3471.1-2 of this title.

§ 3422.3-4 Consultation with the Attorney General.

(a) Definitions. As used in this section, the term:

(1) "Moist mineral matter free", "dry mineral free", "low volatile", "high volatile", "bituminous", "subbituminous" and "lignite" are defined as in ANSI/ASTM D 388-77.

(2) "Committed reserves" means estimated volume of reserves necessary to fulfill current contractual commitments and reserves set aside for own use.

(3) "Uncommitted reserves" means all reserves not committed.

(4) "Affiliate" of the successful bidder means any person, association or corporation which controls, is controlled by, or is under common control with the successful bidder.

(5) "Control" includes having or acquiring effective power or influence to determine the policies, business practices or decisionmaking processes of another person, association or corporation, whether such power or influence is actual or legal and whether exercised directly through ownership of stock or assets, representation on the board of directors or election of one or more officers. Control shall be presumed to exist whenever any person, association or corporation owns 10 percent or more of the outstanding voting securities of another person, association or corporation.

(6) "Joint venture" means a corporation, partnership or association through which the successful bidder (or one or more affiliates of the successful bidder) and one or more nonaffiliate corporations, partnerships or associations own or lease coal reserves.

(7) "Free swelling index" is defined as in ANSI/ASTM D720-67.

(b) Subsequent to a lease sale, but prior to issuing a lease, the authorized officer shall require the successful bidder to submit on a form or in a format approved by the Attorney General the information set out in this section relating to the bidder's coal holdings to the authorized officer for transmittal to the Attorney General. Upon receipt of the information, the authorized officer shall notify the Attorney General of the proposed lease issuance, the name of the successful bidder and the terms of the proposed lease and shall transmit the following statement on coal holdings. The successful bidder's submission shall include the following best available information required by the Attorney General for each coal tract or deposit controlled by the bidder:

(1) With regard to coal subject to the lease to be issued:

(i) Tract description (including state and county);

(ii) Total estimated in-place reserves;

(iii) Total estimated recoverable coal reserves;

(iv) Moist mineral matter free BTU content;

(v) Sulfur content of raw coal;

(vi) Anticipated sulfur content of coal as shipped;

(vii) Dry, mineral matter free volatile matter (for bituminous coal only); and

(viii) Free Swelling Index (for bituminous coal only).

(2) With regard to all coal holdings owned, leased or controlled by the successful bidder or any affiliate(s) of the successful bidder, or owned, leased or controlled by any joint venture of the successful bidder or any affiliate of the successful bidder at the time of the submission to the authorized officer:

(i) A separate listing of tons of total, and uncommitted in place and committed in place coal reserves by state (except that eastern and western Kentucky shall be reported separately) in the following categories:

(A) Low and medium volatile bituminous coal with a Free Swelling Index greater than 4 and with not more than 1 percent sulfur;

(B) Low and medium volatile bituminous coal with a Free Swelling Index greater than 4 and with more than 1 percent sulfur;

(C) High volatile bituminous coal with a Free Swelling Index greater than 4 and with no more than 1 percent sulfur;

(D) High volatile bituminous coal with a Free Swelling Index greater than 4 and with more than 1 percent sulfur;

(E) All other bituminous coal;

(F) Subbituminous coal;

(G) Lignite;

(H) Total coal; and

(I) Federal coal.

(ii) In the case of a joint venture, reserves shall be prorated according to shares of the joint venture for inclusion in the categories in paragraph (b)(2)(i) of this section.

(3) A list of all affiliates and joint ventures of the successful bidder owning, leasing or controlling coal reserves. In the case of a joint venture, the share of the joint venture shall be indicated.

(4) A statement indicating whether the successful bidder, any affiliate or any joint venture including the successful bidder or an affiliate is an railroad, a nuclear fuel fabricator or converter, or an electric utility. If so, each such company shall be identified.

(5) Upon notification by the authorized officer, and additional information the Attorney General may find necessary in order to complete his review of any proposed lease issuance.

(c) Where a successful bidder has previously submitted a statement of coal holdings in the above form, a reference to the date of submission and to the serial number of the record in which it is filed, together with a statement of any and all changes in holdings since the date of the previous submission, shall be accepted.

(d) The authorized officer shall not issue a lease until 30 days after the Attorney General receives the notice and statement of the successful bidder's coal holdings, or the Attorney General notifies the authorized officer that lease issuance would not create or maintain a situation inconsistent with the antitrust laws, whichever comes first. The Attorney General shall inform the successful bidders and simultaneously, the authorized officer, if the successful bidder's statement of coal holdings is incomplete or inadequate, and shall specify what information is required for the Attorney General to complete his review. The 30 day period shall stop running on the date of such notification and not resume running until the Attorney General receives the supplemental information.

(e) The authorized officer shall not issue the lease to the successful bidder, if, during the 30 day period, the Attorney General notifies the authorized officer that the lease issuance would create or maintain a situation inconsistent with antitrust law, except after complying with paragraph (f)(2) of this section.

(f) If the Attorney General notifies the authorized officer that a lease should not be issued, the authorized officer may:

(1) Reject all bids or many notify the Attorney General in accordance with paragraph (b) of this section that issuance of the proposed lease to the next qualified high bidder is under consideration; or

(2) Issue the lease if, after a public hearing is conducted on the record in accordance with the Administrative Procedure Act, the authorized officer determines that:

(i) Issuance of the lease is necessary to carry out the purposes of the Federal Coal Leasing Amendments Act of 1976;

(ii) Issuance of the lease is consistent with the public interest; and

(iii) There are no reasonable alternatives to the issuance of the lease consistent with the Federal Coal Leasing Amendments Act of 1976, the antitrust laws, and the public interest.

(g) If the Attorney General does not reply in writing to the notification in paragraph (b) of this section within 30 days, the authorized officer may issue a lease without waiting for the advice of the Attorney General.

(h) Information submitted to the authorized officer to comply with this section shall be treated as confidential and proprietary data if marked "confidential" by the reporting company. Such information should be submitted to the authorized officer in a sealed envelope and transmitted in that form to the Attorney General.

§ 3422.4 Award of lease.

(a) After the authorized officer has accepted a high qualified bid, and the Attorney General has not objected to lease issuance or the procedures in § 3422.3-4(f)(2) of this title have been completed, the authorized officer shall send four copies of the lease form to the successful bidder. These forms shall be completed, signed, and returned within 30 days of receipt. In addition, the successful bidder shall, within the 30-day period: pay the balance of the bonus bid, if required; pay the first year's rental; pay the cost of publishing the notice of sale; and file a lease bond as required by Subpart 3474 of this chapter. Upon receipt of the above, the authorized officer shall execute the lease.

(b) If the successful bidder dies before the lease is issued, the provisions found in § 3472.2-4 of this title shall apply.

(c) At least half of the acreage offered for competitive lease in any 1 year shall be offered on a deferred bonus payment basis. In a deferred bonus payment, the lessee shall pay the bonus payment in 5 equal installments; the first installment shall be submitted with the bid. The balance shall be paid in equal annual installments due and payable on the next four anniversary dates of the lease. If a lease is relinquished or otherwise cancelled or terminated, the unpaid remainder of the bid shall be immediately payable to the United States.

(d) If the successful bidder fails to comply with the requirements of paragraph (a) of this section, the deposit on the successful bid shall be forfeited to the United States.

Subpart 3425—Leasing on Application

§ 3425.0-1 Purpose.

§ 3425.0-2 Objective.

The objective of this subpart is to provide an application process through which the Department may consider holding lease sales apart from the competitive leasing process set out in §§ 3420.4 through 3420.7 of this title, where an emergency need for unleased coal deposits is demonstrated, or in areas outside coal production regions or outside eastern activity planning areas.

§ 3425.0-6 Policy.

Leasing proposals developed by this application process differ from those that originate through the activity planning process only with respect to the method of tract delineation and the manner in which the planning and environmental analysis will be completed.

§ 3425.1 Application for lease.

§ 3425.1-1 Where filed.

Application for a lease covering lands subject to leasing (43 CFR 3400.2) shall be filed in the Bureau of Land Management State Office having jurisdiction over the lands or minerals involved (43 CFR Subpart 1821).

§ 3425.1-2 Contents of application.

No specific form of application is required. Three copies of the application, including preliminary and other data required by this subpart shall be filed. The lands applied for shall be described in accordance with Subpart 3471 of this title. The application must be accompanied by the filing fee (43 CFR 3473.2).

§ 3425.1-3 Qualifications of the applicant.

Any applicant for a lease shall meet the qualifications required of a lessee as specified in Subpart 3472 of this title.

§ 3425.1-4 Emergency leasing.

(a) An emergency lease sale may be held in response to an application under this subpart if the applicant shows:

(1) That the application involves an existing mining operation that has been producing coal for at least two years before the date of application, and either: (i) The Federal coal is needed within three years to maintain an existing mining operation at the current average annual level of production, or new contracted level of production to supply coal for contracts signed prior to the effective date of these regulations, as substantiated by a complete copy of the supply or delivery contract, or both; or (ii) if the coal deposits are not leased they shall be bypassed in the reasonably foreseeable future, and if leased, some portion of the tract applied for shall be used within three years, as substantiated by the proposed production levels stated in a mining sequence plan submitted as part of the application for lease; and

(2) That the need for the coal deposits shall have resulted from circumstances that were beyond the control of the applicant or that he could not have reasonably foreseen and planned for in time to allow for consideration of leasing the tract under the provisions of § 3420.4 of this title.

(b) The extent of any lease issued under this section shall not exceed 8 years of recoverable reserves at the rate of production under which the applicant qualifies in paragraph (a)(1) of this section.

(c) No lease shall be issued under this section if:

(1) The applicant holds an existing lease issued under this section;

(2) Such an existing lease and the application are related to the same mining operation; and

(3) The number of years of reserves (at the calculated rate of production) leased in accordance with paragraph (b) of this section is greater than the number of years that have passed since the issuance of such an existing lease.

§ 3425.1-5 Leasing outside coal production regions.

A lease sale may be held in response to an application under this subpart if the application covers coal deposits which are:

(a) Outside a coal production region identified under § 3420.3-1(a)(1) of this title; or

(b) Within any part of an eastern coal production region designated to be subject to this subpart under § 3420.3-1(a)(2) of this title.

§ 3425.1-6 Hardship leases.

The Secretary may issue a lease under this subpart based on any application listed by serial number in the modified court order in *NRDC* v. *Hughes*, 454 F. Supp. 148 (D.D.C. 1978).

§ 3425.1-7 Preliminary data.

(a) Any application for a lease shall contain preliminary data to assist the authorized officer in conducting an environmental analysis as described in § 3425.3 of this title.

(b) Such preliminary data shall include:

(1) A map, or maps, (which may be available from state or Federal sources) showing the topography, physical features and natural drainage patterns, existing roads, vehicular trails, and utility systems; the location of any proposed exploration operations, including seismic lines and drill holes; to the extent known, the location of any proposed mining operations and facilities, trenches, access roads or trails, and supporting facilities including the approximate location and extent of the areas to be used for pits, overburden, and tailings; and the location of water sources or other resources that may be used in the proposed operations and facilities.

(2) A narrative statement, including:

(i) The anticipated scope, method, and schedule of exploration operations, including the types of exploration equipment to be used;

(ii) The method of mining anticipated, including the best estimate of the mining sequence and production rate to be followed;

(iii) The relationship between the mining operations anticipated on the lands applied for and existing or planned mining operations, or support facilities on adjacent Federal or non-Federal lands;

(iv) A brief description, including maps or aerial photographs, as appropriate, of: the existing land use or uses within and adjacent to the lands applied for; known geologic, visual, cultural, paleontological or archaeological features; wetlands and floodplains; and known habitat of fish and wildlife—particularly threatened and endangered species—any of which may be affected by the proposed or anticipated exploration or mining operations and related facilities;

(v) A brief description of the proposed measures to be taken to control or prevent fire and to mitigate or prevent soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, air and noise pollution, adverse impacts to the social and infrastructure systems of local communities, and hazards to public health and safety; reclaim the surface; and meet other applicable laws and regulations. The applicant may submit other pertinent information that the applicant wishes to have considered by the authorized officer;

(vi) A statement which describes the intended use of the coal covered by the emergency application; and

(vii) Any other information which will show that the application meets the requirements of this subpart.

(c) The applicant may engage in casual use of the land in the application, but shall not undertake any exploration without prior authorization by exploration license, or undertake any mining operations until lease issuance.

(d) The authorized officer, after reviewing the preliminary data contained in an application, and at any time during an environmental assessment may request additional information from the applicant. Where the surface of the land is held by a qualified surface owner (§ 3400.0-5) and the mining method to be used is other than underground mining techniques, the authorized officer shall obtain documents necessary to show ownership of the surface. The applicant shall submit evidence of written consent from any qualified surface owner(s). (See 43 CFR Subpart 3427).

§ 3425.1-8 Rejection of applications.

(a) An application for a lease shall be rejected in total or in part when the authorized officer determines that: (1) The application is not consistent with the applicable regulations; (2) issuance of the lease would violate the integrity of the normal leasing process; or (3) leasing of the lands covered by the application, for environmental or other sufficient reasons, would be contrary to the public interest.

(b) Any application subject to rejection under paragraph (a) of this section shall not be rejected until the applicant is given written notice of the opportunity to provide requested missing information and fails to do so within the time specified in the decision issued for that purpose.

§ 3425.2 Land use plans.

No lease shall be issued under this subpart unless the lands have been included in a comprehensive land use plan or a land use analysis, as required in § 3420.1-5 of this title. The decision to hold a lease sale shall be consistent with the appropriate comprehensive land use plan or land use analysis.

§ 3425.3 Environmental analysis.

(a) Before a lease sale may be held under this subpart the authorized officer shall prepare an environmental assessment of the proposed lease area.

(1) The environmental assessment shall include:

(i) An evaluation of direct and indirect potential impacts including cumulative impacts of coal leasing and development upon the physical and socio-economic environment of the proposed lease area and adjacent areas that may be affected;

(ii) An evaluation of the technical and natural potential for successful reclamation on the proposed lease area; and

(iii) An evaluation of all reasonable alternatives to leasing the area or to any known plans of operation for the proposed area.

(2) The environmental assessment shall contain recommendations and special stipulations regarding:

(i) Lands that should be excluded from the proposed areas to avoid unacceptable environmental or special impacts, including those lands to be excluded as identified through the application of the unsuitability criteria in Subpart 3461 of this title.

(ii) Any specific measures required to avoid or mitigate adverse impacts to, or to reclaim areas that may be acceptable for further consideration for leasing including measures to assure appropriate post-mining land use and measures to prevent irreparable damage or destruction of unique environmental values that are identified either through the application of the unsuitability criteria in Subpart 3461 of this title or in the comprehensive land use plan or land use analysis.

(3) If, based upon the environmental assessment prepared under paragraph (a)(2) of this section the authorized officer determines that an environmental impact statement is required under the National Environmental Policy Act of 1969, either a statement shall be prepared in accordance with the provisions of 40 CFR Part 1500, or the authorized officer may determine that, because of critical environmental considerations or limitations, including reclamation potential, the application shall be rejected pursuant to § 3425.1-8 of this title.

(4) If, based upon the environmental assessment prepared under paragraph (a)(2) of this section, the authorized officer determines that an environmental impact statement is not required under the National Environmental Policy Act of 1969, a finding of no significant impact shall be prepared and issued in accordance with 40 CFR 1501.4 and 1506.6.

(b) For lease applications involving lands in the National Forest System, the authorized officer shall submit the lease application to the Secretary of Agriculture for consent, for completion or consideration of an environmental assessment and for the attachment of appropriate lease stipulations, and for the making of any other findings prerequisite to lease issuance. (43 CFR 3400.3, 3461.1(a).)

§ 3425.4 Consultation and sale procedures.

(a) (1) Prior to holding any lease sale in response to any application under this subpart, a public hearing or hearings shall be held on the proposed sale to allow public comment on and discussion of the potential effects of mining the proposed lease, including impacts on the environment, agriculture and other economic activities and community or regional services. The hearing on an environmental impact statement prepared under § 3425.3 of this title, if one is prepared, may satisfy the hearing requirement.

(2) Prior to holding any lease sale under this subpart, the Secretary shall consult with the entities and individuals listed in § 3420.5-2 through 3420.5-5 of this title.

(3) No notice of sale shall be published in response to an application under this subpart for any lands subject to § 3427.1 of this title unless and until the authorized officer has received written consent from the qualified surface owner(s).

(b) (1) Subpart 3422 of this title applies in full to any sale to be held in response to an application filed under Subpart 3425 of this title.

(2) In addition to the requirements set forth in § 3422.2 of this title, in any sale authorized under § 3425.1-4 of this title, the successful bidder shall meet the criteria in § 3425.1-4 of this title.

§ 3425.5 Lease terms.

The terms of a lease issued under this subpart shall be consistent with the terms established for all competitive coal leases (43 CFR Part 3470).

Subpart 3427—Split Estate Leasing

§ 3427.0-1 Purpose.

The purpose of this subpart is to set out the protection that shall be afforded qualified surface owners of split estate lands (43 CFR 3400.0-5).

§ 3427.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1304), as construed in Solicitor's Opinion M-36909, 86 I.D. 28 (1979).

§ 3427.0-7 Scope.

The surface owner consent provisions of the Surface Mining Control and Reclamation Act do not apply:

(a) To preference right lease applications; and

(b) If the split estate coal is to be mined by underground mining techniques. (43 CFR 3500.0-5.)

§ 3427.1 Coal deposits subject to consent.

On split estate lands (43 CFR 3400.0-5) where the surface is owned by a qualified surface owner, coal deposits that will be mined by methods other than underground mining techniques shall not be included in a lease sale notice without written consent from the qualified surface owner (43 CFR 3400.0-5) allowing the lessee/operator to enter and commence surface mining operations.

§ 3427.2 Procedures.

(a) (1) Each written consent, or evidence of written consent shall be filed with the appropriate Bureau of Land Management State Office (43 CFR Subpart 1821) at least 30 working days prior to the publication of the lease sale notice of the lands to which it applies. It shall be the responsibility of parties intending to file consents to be aware of pending coal lease sale notice dates. Generally, these dates shall be as published in the final regional sale schedule (43 CFR 3420.7).

(2) Statement of refusal to consent shall be filed with the appropriate Bureau of Land Management State Office, but such statement shall be accepted for filing only during activity planning.

(b) Written consent, evidence of written consent, or statement of refusal to consent may be filed by any private person or persons with a potential interest in the lease sale of split estate lands.

(c) Such filing shall, at a minimum, contain the present legal address of the qualified surface owner, and the name, ownership, interest, if any, and legal address of the party making the filing, and if it is a written consent or evidence thereof, a copy of the written consent or evidence thereof.

(d) At each stage in the tract delineation, ranking and scheduling in that region, split estate lands that would be mined by other than underground mining techniques, covered by written consents that are filed with the appropriate State Office before the final decision on the pending regional lease sale schedule, shall be given priority over such split estate lands where there is no written consent from the qualified surface owner.

(e) Within 15 working days after the filing of a written consent, evidence thereof, or a statement of refusal to consent, the State Office shall verify that the written consent or evidence of such consent meets all of the following requirements, and that the statement of refusal to consent meets the requirements of paragraphs (e)(2) and (3) of this section:

(1) The right to enter and commence mining is transferable to whoever makes the successful bid in a lease sale for a tract which includes the lands to which the consent applies. A written consent shall be considered transferable only if, at a minimum, it allows that after the lease sale for the tract to which the consent applies (i) the payment for the consent may be made by the successful bidder or (ii) the successful bidder may reimburse the party that first obtained the consent for the purchase price of the consent;

(2) The named surface owner is a qualified surface owner as defined in § 3400.0-5 of this title; and

(3) The title for all split estate lands described in the filing is held by the named qualified surface owners.

(f) Upon receipt of a filing from anyone other than the named qualified surface owner, the authorized officer shall contact the named qualified surface owner and request his confirmation in writing that the filed, transferable, written consent or evidence thereof to enter and commence mining has been granted, and that the filing fully discloses all of the terms of the written consent, or that the refusal to consent is accurate.

(g) The conditions of paragraphs (e) and (f) of this section shall be met prior to publication of the sale notice.

(h) The State Director shall in all cases notify the person or persons filing the written consent, evidence of written consent, or statement of refusal to consent of the results of the review of the filing, including any request for additional information needed to satisfy the requirements of this subpart in cases where insufficient information was supplied with the original filing.

(i) The purchase price of any applicable written consent from a qualified surface owner shall be included with the description of the tract(s) in the notice of lease sale, and the other terms of the consent shall be included in the detailed statement on the tract sale.

(j) Any statement of refusal to consent shall be treated as controlling until the land use plan that includes the area covered by the refusal to consent is revised or the surface estate is sold. When revision of the land use plan is initiated, the qualified surface owner shall be notified that his prior statement of refusal has expired, and shall be given the opportunity to submit another statement.

§ 3427.3 Validation of information.

Any person submitting a written consent shall include with his filing a statement that the evidence submitted, to the best of his knowledge, represents a true, accurate, and complete statement of information regarding the consent for the area described.

§ 3427.4 Pre-existing consents.

An otherwise valid written consent given by a qualified surface owner prior to August 4, 1977, shall be considered valid for the purposes of this subpart.

PART 3430—NONCOMPETITIVE LEASES

Subpart 3430—Preference Right Leases

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AUTHORITY: 30 U.S.C. 181 et seq.; 30 U.S.C. 521-531; 30 U.S.C. 351-358; 30 U.S.C. 1201 et seq.; 42 U.S.C. 7101 et seq. and 43 U.S.C. 1701 et seq.

SOURCE: 44 FR 42628, July 19, 1979, unless otherwise noted.

Subpart 3430—Preference Right Leases

§ 3430.0-1 Purpose.

These regulations set forth procedures for processing noncompetitive (preference right) coal lease applications on Federal lands.

§ 3430.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 2(b) of the Mineral Leasing Act of 1920 (30 U.S.C. 201(b)).

(c) These regulations also implement Solicitor's Opinion M-36893, 84 I.D. 442 (1977).

§ 3430.0-7 Scope.

Because section 4 of the Federal Coal Leasing Amendments Act of 1976, amending 30 U.S.C. 201(b), repealed the Secretary's authority to issue or extend a coal prospecting permit on Federal lands, the regulations in this subpart apply only to lease applications which have already been filed. No additional prospecting permits that confer a preference right to a coal lease shall be issued. Therefore, these regulations address only the procedures for processing pending preference right lease applications. The surface owner consent provisions of section 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1304), do not apply to preference right lease applications.

§ 3430.1 Preference right leases.

§ 3430.1-1 Showing required for entitlement to a lease.

An applicant for a preference right lease shall be entitled to a noncompetitive coal lease if the applicant can demonstrate that he discovered commercial quantities of coal on the prospecting permit lands within the term of the prospecting permit, all other requirements having been met.

§ 3430.1-2 Commercial quantities defined.

For the purpose of § 3430.1-1 of this title, commercial quantities is defined as follows:

(a) The coal deposit discovered under the prospecting permit shall be of such character and quantity that a prudent person would be justified in further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

(b) The applicant shall present sufficient evidence to show that there is a reasonable expectation that revenues from the sale of the coal shall exceed the cost of developing the mine and extracting, removing, transporting, and marketing the coal. The costs of development shall include the estimated cost of exercising environmental protection measures and suitably reclaiming the lands and complying with all applicable Federal and state laws and regulations.

§ 3430.2 Application for lease.

§ 3430.2-1 Initial showing.

All preference right coal lease applications shall have contained or shall have been supplemented by the timely submission of the following information:

(a) The measured and indicated quantity and quality of the reserves discovered within the boundaries of the prospecting permit.

(1) Coal quantity shall be indicated by structural maps of the tops of all beds to be mined, isopachous maps of beds to be mined and interburden; and, for beds to be mined by surface mining methods, isopachous maps of the overburden. These maps shall show the location of test holes and

outcrops. An estimate of the measured and indicated reserves for each bed to be mined shall be included.

(2) Coal quality data shall include, at a minimum, an average proximate analysis, sulfur content, and BTU content of the coal in each bed to be mined. Also, all supporting geological and geophysical data used to develop the required information shall be submitted.

(b) Topographic maps as available from state or Federal sources showing physical features, drainage patterns, roads and vehicle trails, utility systems, and water sources. The location of proposed development and mining operations facilities shall be identified on the maps. These maps shall include the approximate locations and extent of tailings and overburden storage areas; location and size of pit areas; and the location of water sources or other resources that may be used in the proposed operation and facilities incidental to that use.

(c) A narrative statement that includes:

(1) The anticipated scope of operations, the schedule of operations, and the types of equipment to be used;

(2) The mining method to be used and an estimate of the expected mining sequence and production rate;

(3) The relationship, if any, between operations planned on the land applied for and existing or planned operations and facilities on adjacent lands;

(4) A brief description, including maps or aerial photographs as appropriate of: (i) Existing land uses on and adjacent to the applied for land; (ii) known geologic, visual, cultural, or archaeological features on the applied-for land; and (iii) known wildlife habitat, and that of threatened or endangered plant and animal species, that may be affected by the planned exploration and mining operations;

(5) A brief description of measures planned to prevent or control fire and to mitigate or prevent soil erosion, ground and surface water pollution, damage to wildlife or its habitat, air and noise pollution, hazards to public health and safety, and impacts to the social and infrastructure systems of local communities; and

(6) A brief description of any plans that the applicant wishes to have considered by the authorized officer which show how the applicant expects to reclaim disturbed sites and otherwise meet applicable laws and regulations.

§ 3430.2-2 Additional information to comply with statutory and regulatory requirements.

In addition to the information required by § 3430.2-1 of this title, the applicant shall have submitted within the time specified by the authorized officer:

(a) Certified abstracts indicating the presence of any mining claims lying within or partly within the preference right lease application area that were located prior to the issuance of the prospecting permit, or a certified abstractor's certificate indicating the absence of any mining claims located prior to that time; or

(b) Any other information needed to show compliance with statutory or regulatory requirements.

§ 3430.2-3 Additional time.

(a) If the applicant has timely submitted some, but not all, of the information required by §§ 3430.2-1 and 3420.2-2 of this title, the authorized officer shall request additional information and shall specify the information required.

(b) The applicant shall submit any requested information within 60 days of the date of the request. The authorized officer may grant one 60-day extension if the applicant files a written request for an extension within the first 60-day period.

§ 3430.3 Planning and environment.

§ 3430.3-1 Land use planning.

(a) As a matter of policy, the Department shall complete the processing of all preference right lease applications by December 1, 1984.

(b) Preference right lease applications shall be processed in the cycle of on-going comprehensive land use plans unless the authorized officer determines that the processing of the application, in the cycle of on-going comprehensive land use plans, will not be completed by December 1, 1984.

(c) (1) Each applicant may file a request with the authorized officer:

(i) For an estimate of when the application shall be processed in the cycle of on-going comprehensive land use plans; and

(ii) To have the applicant's application processed in advance of the period specified in the authorized officer's estimate.

(2) The request shall include a statement of how the applicant will benefit from having the application processed more quickly than otherwise scheduled, and shall specify how the pendency of the application affects the applicant's production, marketing or use of coal before 1986.

(3) If the authorized officer concludes that the failure to process an application apart from the cycle of on-going comprehensive land use plans would cause the applicant substantial hardship, the authorized officer may process the application apart from the cycle of on-going comprehensive land use plans. If the authorized officer has multiple applications which he or she finds involve substantial hardship, the authorized officer, in determining which applications to process first, shall consider the applicant's need for coal, the length of time the application has been pending, the regional need for coal and the promptness with which the applicant has responded to requests for information from the Department.

§ 3430.3-2 Environmental analysis.

(a) After the applicant has completed the initial showing required under § 3430.2 of this title, the authorized officer shall conduct an environmental analysis of the proposed preference right lease area and prepare an environmental assessment or environmental impact statement on the application.

(b) The environmental assessment or environmental impact statement shall include:

(1) An evaluation of direct and indirect potential impacts including cumulative impacts of leasing and development upon the physical and socioeconomic environment of the proposed lease area and adjacent areas that may be affected;

(2) An evaluation of the technical and natural potential for successful reclamation on the proposed lease area; and

(3) An evaluation of all reasonable alternatives to leasing the area, including the possibilities of exchange or purchase, or to any known plans of operation for the proposed area as set forth in any preliminary data and information.

(c) The environmental assessment or environmental impact statement shall be prepared containing recommendations on lease terms and special stipulations regarding:

(1) Lands that should be leased with conditions or protective stipulations or other action to prevent unacceptable environmental or social impacts, including stipulations or other actions to protect those lands identified through the application of the unsuitability criteria of Subpart 3461 of this title;

(2) Any specific measures required to avoid or to mitigate adverse impacts, or to reclaim areas that may be acceptable for leasing and development, including measures to assure appropriate postmining land use.

(d) If, based upon an environmental assessment prepared under paragraph (c) of this section, the authorized officer determines that an environmental impact statement is required under the National Environmental Policy Act of 1969, such a statement shall be prepared according to 40 CFR Group 1500.

(e) If, based upon an environmental assessment prepared under paragraph (c) of this section, the authorized officer determines that an environmental impact statement is not required, a finding of no significant impact shall be prepared and issued in accordance with 40 CFR 1501.4 and 1506.6.

[44 FR 42628, July 19, 1979, as amended at 44 FR 56340, Oct. 1, 1979]

§ 3430.4 Final showing.

§ 3430.4-1 Request for final showing.

(a) Upon completion of the environmental assessment or impact statement on the application, the authorized officer shall promptly request a final showing by the applicant.

(b) The authorized officer shall transmit to the applicant, with the request for a final showing, the following:

(1) The proposed lease form, including any proposed stipulations; and

(2) A copy of the environmental assessment or impact statement on the application including a map or maps showing all areas subject to specific conditions or protective stipulations because they have been assessed or designated to be unsuitable for all or certain stipulated methods of coal mining, or because of other identified values that are not embodied in the unsuitability criteria in subpart 3461 of this title.

(c) Within 90 days of receiving the proposed lease form, the applicant shall submit the following information:

(1) Estimated revenues;

(2) The estimated costs that a prudent person would consider before deciding to operate the proposed mine, including but not limited to, the cost of developing the mine, removing the coal, processing the coal to make it salable, transporting the coal, paying applicable royalties and taxes, and complying with applicable laws and regulations, the proposed lease terms, and special stipulations; and

(3) A comparison of the estimated costs and revenues of any mining venture constituting the logical mining unit of which the lease would become a part.

(d) The information submitted by the applicant shall be sufficiently detailed to determine whether the applicant's showing (1) has a reasonable factual basis, (2) supports the applicant's assertion that the proposed lease contains commercial quantities of coal, and (3) reflects a consideration of all factors required by this section.

(e) The applicant may delete any area subject to special conditions or protective stipulations, because it has been assessed to be unsuitable or otherwise, and the costs of mining subject to the conditions or protective stipulations, from the final showing required by paragraph (c) of this section.

§ 3430.4-2 Additional information.

(a) If the applicant for a preference right lease has submitted timely, some, but not all of the information required in § 3430.4-1 of this title, the authorized officer shall request additional information and shall specify the information required.

(b) The applicant shall submit any requested additional information within 60 days of the receipt of the request. The authorized officer may grant one 60-day extension if the applicant files a written request within the first 60-day period.

§ 3430.5 Determination of entitlement to lease.

§ 3430.5-1 Rejection of application.

(a) The authorized officer shall reject the application if:

(1) The applicant fails to show that coal exists in commercial quantities on the applied for lands; or

(2) The applicant does not respond to a request for additional information within the time period specified in § 3430.2-3 or § 3430.4-2 of this title; or

(3) The applicant otherwise failed to meet mandatory statutory or regulatory requirements, including those relating to acreage limitations, qualifications to hold leases, timely payment of rent or procedural requirements.

(b) (1) The authorized officer shall reject those portions of an otherwise acceptable application which were not available for prospecting when the underlying prospecting permit was issued because the lands were claimed, developed or withdrawn from coal leasing.

(2) In any action under this subsection, the authorized officer shall reject all lands in each affected smallest legal subdivision or, if practicable, each affected 10 acre aliquot part of the subdivision.

§ 3430.5-2 Appeals, lack of showing.

(a) If the application is rejected because the existence of commercial quantities of coal has not been shown, the applicant may, in accordance with the procedures in Part 4 of this title, file a notice of appeal and a statement of the reasons for the appeal.

(b) The applicant shall have the right to a hearing before an Administrative Law Judge if the applicant alleges that the facts in the application are sufficient to show entitlement to a lease.

(c) In such a hearing, the applicant shall bear both the burden of going forward and the burden of proof to show, by a preponderance of evidence, that commercial quantities of coal exist in the proposed lease area.

§ 3430.5-3 Determination to lease or seek an exchange.

(a) A preference right lease shall be issued if, upon review of the application, any available land use plan and environmental assessment, the authorized officer determines that:

(1) Coal has been discovered in commercial quantities on the lands applied for; and

(2) The applicant has used reasonable economic assumptions and data to support the showing that coal has been found on the proposed lease in commercial quantities; and

(3) The conditions or protective lease stipulations assure that environmental damage can be avoided or acceptably mitigated.

(b) The authorized officer may recommend that the Secretary initiate exchange proceedings under § 3430.5-4 of this title, if he determines that:

(1) The land under application has been shown to contain commercial quantities of coal;

(2) All or a portion of the proposed lease has been assessed as land that should be unavailable for coal development because of land use or resource conflicts or as land that is unsuitable for coal mining under the provisions of Subpart 3461 of this title; and

(3) The land is exempted from the application of any relevant unsuitability criteria or, for similar reasons, the Secretary lacks the authority to prevent damage to or loss of the land use of resource values threatened by lease operations.

§ 3430.5-4 Lease exchange.

The Secretary may initiate, upon his own initiative, the recommendation of the authorized officer, or the request of the applicant, lease exchange procedures under 43 CFR Subpart 3435 for the issuance of coal lease bidding rights, modifications to existing coal leases, a mineral lease under Subpart 3526 of this title, or in the case of an application including lands in an alluvial valley floor, the issuance of a coal lease under provisions of Subpart 3436 of this title, if he finds that the three conditions in § 3430.5-3(b) of this title are met.

§ 3430.6 Lease issuance.

§ 3430.6-1 Lease terms.

Each preference right lease shall be subject to the terms provided for Federal coal leases established in Part 3470 of this title including: Royalty and rental rates and the diligent development, continued operation and logical mining unit requirements in § 3475.4 of this title.

§ 3430.6-2 Bonding.

The lease bond for a preference right lease shall be set in accordance with Subpart 3474 of this title.

§ 3430.6-3 Lease area.

A preference right lease shall include all lands in the application used in determining the entitlement to a lease.

§ 3430.6-4 Duration of leases.

Preference right leases shall be issued for a term of 20 years and for so long thereafter as coal is produced in commercial quantities as defined in Subpart 3400.0-5 of this title. Each lease shall be subject to readjustment at the end of the first 20-year period and at the end of each period of 10 years thereafter in accordance with Subpart 3451 of this title.

§ 3430.7 Trespass.

Mining operations conducted prior to the effective date of a lease shall constitute an act of trespass and be subject to penalties specified by § 9239.5 of this title.

Subpart 3431—Negotiated Sales—Rights-of-Way

§ 3431.0-1 Purpose.

The purpose of this subpart is to provide procedures for the sale of coal that is necessarily removed in the exercise of a right-of-way issued under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.).

§ 3431.0-3 Authority.

(a) The regulations of this subpart are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 2(a)(1) of the Mineral Leasing Act of 1920, as amended by section 2 of the Act of October 30, 1978 (30 U.S.C. 201(a)(1)).

§ 3431.1 Qualified purchaser.

Any person who has acquired or applied for a right-of-way under Title V of the Federal Land Policy and Management Act of 1976 which requires the removal of coal deposits as a necessary incident to development, construction or use of the right-of-way is qualified to purchase the coal to be removed.

§ 3431.2 Terms and conditions of sale.

(a) Coal to be removed in connection with a right-of-way shall be sold to the qualified purchaser only at the estimated fair market value, as determined by the Secretary.

(b) Where the right-of-way is being used in connection with the development of a lease, the removal of coal from the right-of-way shall be subject to the same requirements for health and safety protection, surface protection and rehabilitation that apply to the lease involved, and provisions for adequate recovery and conservation of the coal deposit.

(c) Where the right-of-way is not being used in the develoment of a Federal coal lease, the removal of the coal shall be made subject to the surface Mining Control and Reclamation Act of 1977, and subject to such terms and conditions as the authorized officer determines are necessary: (1) To protect public health, safety, and the environment; and (2) to ensure adequate recovery and conservation of the coal deposits in the right-of-way.

(d) All terms and conditions of the sale shall be terms and conditions of the right-of-way and shall be administered under the provisions of Group 2800 of this title.

Subpart 3432—Lease Modifications

§ 3432.0-3 Authority.

(a) The regulations of this subpart are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 3 of the Mineral Leasing Act of 1920, as amended by section 13 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 203).

§ 3432.1 Application.

(a) A lessee may apply for a modification of a lease to include coal lands or coal deposits contiguous to those embraced in a lease. In no event shall the acreage in the application, when combined with the total area added by all modifications made after August 4, 1976, exceed 160 acres or the number of acres in the original lease, whichever is less.

(b) The lessee shall file the application for modification in the Bureau of Land Management State Office having jurisdiction over the lands involved (43 CFR Subpart 1821), describing the additional lands desired, the lessee's needs or reasons for such modification, and the reasons why the modification would be to the advantage of the United States.

[44 FR 42628, July 19, 1979, as amended at 44 FR 56340, Oct. 1, 1979]

§ 3432.2 Availability.

(a) The authorized officer may modify the lease to include all or part of the lands applied for if he determines that: (1) The modification serves the interests of the United States; (2) there is no competitive interest in the lands or deposits; and (3) the additional lands or deposits cannot be developed as part of another potential or existing independent operation.

(b) Coal deposits underlying land the surface of which is held by a qualified surface owner, and which would be mined by other than underground mining techniques, may not be added to a lease by modification.

(c) The lands applied for shall be added to the existing lease without competitive bidding, but the United States shall receive the fair market value of the lease of the added lands, either by cash payment or adjustment of the royalty applicable to the lands added to the lease by the modification.

§ 3432.3 Terms and conditions.

(a) The terms and conditions of the original lease shall be made consistent with the laws, regulations, and lease terms applicable at the time of modification except that if the original lease was issued prior to August 4, 1976, the minimum royalty provisions of section 6 of the Federal Coal Leasing Amendments Act of 1976 (30 U.S.C. 207; 43 CFR 3473.3-2) shall not apply to any lands covered by the lease prior to its modification until the lease is readjusted.

(b) Before a lease is modified, the lessee shall file a written acceptance of the conditions imposed in the modified lease and a written consent of the surety under the bond covering the original lease to the modification of the lease and to extension of the bond to cover the additional land.

(c) A lease modification shall not be made until the authorized officer has complied with the procedures and standards set out in § 3425.3 of this title.

Subpart 3435—Lease Exchange

§ 3435.0-1 Purpose.

The objective of these regulations is to provide methods for exchange of coal resources when it would be in the public interest to shift the impact of mineral operations from leased lands to currently unleased lands to preserve public resource or social values, and to carry out Congressional directives authorizing coal lease exchanges.

§ 3435.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement:

(1) Section 3 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 203);

(2) Section 510(b)(5) of the Surface Mining Control and Reclamation Act (30 U.S.C. 1260(b)(5)); and

(3) Section 1 of the Act of October 30, 1978 (92 Stat. 2073).

§ 3435.1 Coal lease exchanges.

Where the Secretary determines that coal exploration, development and mining operations would not be in the public interest on an existing lease or preference right lease application, or where the Congress has authorized lease exchange for a class or list of leases, an existing lease or preference right lease application may be relinquished in exchange for:

(a) Leases where the Congress has specifically authorized the issuance of a new coal lease;

(b) The issuance of coal lease bidding rights of equal value;

(c) A mineral lease other than coal, by mutual agreement between the applicant and the Secretary under Subpart 3526 of this title; or

(d) Federal coal lease modifications; or

(e) Any combination of the above.

These interests may be granted to the extent of the Secretary's authority in exchange for the relinquishment of all or part of the existing lease or preference right lease application, any part of which has been or may be assessed to be unacceptable for development because of non-coal public values identified or discovered after the lease or prospecting permit was issued.

§ 3435.2 Qualified exchange proponents—Limitations.

(a) Any person who holds a Federal coal lease, or a preference right lease application that has been found to meet the commercial quantities requirements of §§ 3430.1 and 3430.5 of this title on lands described in § 3435.1

of this title is qualified to ask the Secretary to initiate an exchange.

(b) Except for leases qualified under Subpart 3536 of this title, the Secretary may issue a new coal lease in exchange for the relinquishment of outstanding leases or lease applications only in those cases listed in section 1 of the Act of October 30, 1978.

(c) The Secretary shall evaluate each qualified exchange request and determine whether an exchange is appropriate.

(d) Any modification of a coal lease in an exchange under this subpart shall be subject to the limitations in §§ 3432.1(a) and 3432.2(b) of this title.

§ 3435.3 Exchange procedures.

§ 3435.3-1 Exchange notice.

(a) The Secretary shall initiate exchange procedures by notifying in writing a Federal coal lessee or preference right lease applicant that consideration of an exchange of mineral leases or other coal lease interests is appropriate. The notification may be on the Secretary's initiative or in response to a request under § 3435.2 of this title.

(b) The exchange notice shall include a statement of why the Secretary believes an exchange may be in the public interest.

(c) The notice may contain a description of the lands on which the Secretary would grant a lease or lease interest in exchange. If the exchange is for coal development rights, the lands shall be selected from those found acceptable for further consideration for leasing under § 3420.2 of this title. The description of the interests under consideration for relinquishment may include all or part of an existing lease or preference right lease application.

(d) The notice shall contain a request that the lessee or preference right lease applicant indicate whether he is willing to negotiate an exchange.

§ 3435.3-2 Initial response by lessee or lease applicant.

(a) The lessee or preference right lease applicant wishing to negotiate an exchange shall so reply in writing within 60 days of the receipt of the exchange notice. The reply may include a description of the lands on which the lessee or lease applicant would accept an exchange lease or grant of coal lease modifications.

(b) A reply to the exchange notice by a lessee or preference right lease applicant indicating willingness to enter into an exchange shall also indicate willingness to provide the geologic and economic data needed by the Secretary to determine the fair market value of the lease or lease application to be relinquished. The lessee or preference right lease applicant shall also indicate willingness to provide any geologic and economic data in his possession that will help the Secretary to determine the fair market value of the potential Federal lease exchange tract or tracts.

§ 3435.3-3 Agreement to terms.

(a) If both parties wish to proceed with the exchange, the authorized officer and the lessee or preference right lease applicant shall:

(1) Negotiate the selection of appropriate exchange lands containing a logical mining unit of coal in those cases where the Secretary is authorized to issue a coal exchange lease, or a minable unit of leasable minerals other than coal;

(2) Negotiate appropriate coal lease modifications;

(3) Negotiate to establish the value of coal lease bidding rights; or

(4) Negotiate any combination of the above.

(b) Land proposed for lease in exchange for, or for inclusion in, an existing lease or preference right lease application shall be subject to leasing under Group 3400 or 3500 of this title as appropriate, and any coal lands shall have been found to be acceptable for further consideration for leasing under § 3420.2-3 of this title.

§ 3435.3-4 Determination of value.

The value of the land to be leased, or added by lease modification, or of the bidding rights to be issued in exchange shall, to the satisfaction of the lessee or lease applicant and the Secretary, be equal to the estimated fair market value of the lease or lease application to be relinquished.

§ 3435.3-5 Notice and public hearing.

(a) After the lessee or lease applicant and the Secretary agree on the land to be leased, the coal lease modifications to be granted or the bidding rights to be issued, notice of the proposed exchange shall be published in the FEDERAL REGISTER and in at least one newspaper of general circulation in each county or equivalent political subdivision where both the offered and selected lands are located. The notice shall announce that, upon request, at least one public hearing will be held in a city or cities located near each tract involved. The notice shall also contain the Secretary's preliminary findings why the proposed exchange is in the public interest. The hearing(s), if any, shall be held to obtain public comments on the merits of the proposed exchange.

(b) If the tract to be leased in exchange has been identified at the time of the environmental assessment or environmental impact statement of the exchange, any notice of the availability of a draft statement or public hearing on the assessment or statement may be used to comply with paragraph (a) of this section.

§ 3435.3-6 Consultation with Governor.

(a) The Secretary shall notify the Governor of each state in which lands in the proposed exchange are located of the terms of the exchange and the Secretary's preliminary findings why the exchange is in the public interest. The Secretary shall give each Governor at least 45 days after this notification to comment on the proposal prior to consummating the exchange.

(b) If, within the 45 day period, the Governor(s), in writing, objects to an exchange that involves leases or lease rights in more than one state, the Secretary will not consummate the exchange for 6 months from the date of objection. The Governor(s) may during this 6-month period submit a written statement why the exchange should not be consummated, and the Secretary shall, on the basis of this statement, reconsider the lease proposal.

§ 3435.3-7 Consultation with the Attorney General.

In any exchange which, if consummated, shall result in the issuance of a Federal coal lease, the Secretary, after issuing an exchange notice under § 3435.3-1 of this title and before issuance of a written decision under § 3435.4 of this title.

(a) Shall require the lessee or lease applicant to submit the information in § 3422.3-4 of this title; and

(b) If the Attorney General, within 30 days, objects to lease issuance, shall not issue the exchange lease except after complying with the provisions of § 3422.3-4(f)(2) of this title.

§ 3435.4 Issuance of lease, lease modification, or bidding rights.

(a) If, after any public hearing(s), the Secretary by written decision concludes that the issuance of a coal or other mineral lease or coal lease modification or coal lease bidding rights in exchange for the relinquishment of the existing lease, preference right lease application or portion thereof is in the public interest, lease, stipulations for operations on the exchange lease or modified lease shall be established.

(b) The exchange documents shall contain:

(1) A statement that the lessee thereby quitclaims all right or interest in the lease or preference right lease application exchanged; and

(2) A statement of the Secretary's findings that lease issuance is in the public interest.

(c) The exchange lease or lease modification shall be issued upon relinquishment of the lease, preference right lease application, or portion thereof.

(d) The exchange lease or lease modification shall be subject to all relevant provisions of Group 3400 or 3500 of this chapter, 30 CFR Chapter VII, Subchapter D, and 30 CFR Part 211, as appropriate.

Subpart 3436—Lease Exchange—Alluvial Valley Floors

§ 3436.0-1 Purpose.

The purpose of this subpart is to establish procedures for coal lease exchanges where coal development operations would interrupt, discontinue or preclude farming on alluvial valley floors west of the 100th Meridian, west longitude, or materially damage the quantity or quality of water in surface or underground systems that supply these alluvial valley floors.

§ 3436.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 510(b)(5) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)).

§ 3436.1 Qualified exchange proponents.

(a) The coal lease exchange program for designated alluvial valley floors shall be limited to any person who holds a Federal coal lease or preference right lease application on lands west of the 100th Meridian, west longitude, and who has made substantial financial and legal commitments prior to January 4, 1977, in connection with the lease or preference right lease application, and who otherwise meets the criteria in the proviso in section 510(b)(5) of the Surface Mining Control and Reclamation Act of 1977. Any such person may propose an exchange under this subpart.

(b) The lease offered in exchange by the Secretary shall be for lands determined to be acceptable for leasing under criteria of the Geological Survey and acceptable for further consideration for leasing under the criteria in § 3420.2-3 of this title, including the unsuitability criteria in Subpart 3461 of this title.

§ 3436.2 Exchange procedures.

(a) The Secretary on his own motion, or upon recommendation of the authorized officer, or upon request by any qualified lessee, may initiate a lease exchange. No special form of application is required.

(b) The exchange shall be processed in accordance with the procedures in Subpart 3435 of this title for other lease and lease interest exchanges.

§ 3436.3 Recovery of costs.

The exchange proponent shall bear all administrative costs of the exchange, including the cost of establishing the value of each lease involved in the exchange.

§ 3436.4 Lease issuance.

Any coal lease issued as a result of an exchange under this subpart shall be subject to all relevant provisions of Group 3400 of this title, 30 CFR Chapter VII, Subchapter D, and 30 CFR Part 211.

Subpart 3437—Coal Land Exchange—Alluvial Valley Floors

§ 3437.0-1 Purpose

The purpose of this subpart is to establish criteria for the exchange of privately owned (fee) coal for unleased federally-owned coal where coal mining operations would interrupt, discontinue, or preclude farming on alluvial valley floors west of the 100th Meridian, west longitude, or materially damage the quantity and quality of water in surface or underground systems that supply these alluvial valley floors.

§ 3437.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement:

(1) Section 510(b)(5) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)); and

(2) Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

§ 3437.1 Qualification criteria.

§ 3437.1-1 Qualified exchange proponents.

The fee coal exchange program for designated alluvial valley floors shall initially be limited to all qualified persons who:

(a) Own coal west of the 100th Meridian, west longitude, and:

(b) (1) Who have made or whose lessees have made substantial financial and legal commitments prior to January 1, 1977, in connection with the coal holding; or

(2) Who have had or whose lessees have had the regulatory authority not issue a surface mining permit because the holding is in an alluvial valley floor, and who otherwise meet the criteria of the provisions in section 510(b)(5) of the Surface Mining Control and Reclamation Act. Any such person may propose an exchange under this subpart.

[44 FR 42628, July 19, 1979, as amended at 44 FR 56340, Oct. 1, 1979]

§ 3437.1-2 Unqualified proponents.

The Secretary shall not consider an exchange proposed by the owner of Coal West of the 100th Meridian, west longitude, otherwise qualified under § 3437.1-1 of this title, where:

(a) The existing land use is undeveloped rangeland which is not significant to farming;

(b) The area of the affected alluvial valley floor is small and provides or may provide only negligible support for production from one or more farms; or

(c) The prohibition against mining the coal in the alluvial valley floor does not substantially decrease the value of, or prevent the successful mining of, other coal that would have been developed in conjunction with the coal in the alluvial valley floor.

§ 3437.2 Exchange procedures.

(a) The Secretary shall evaluate each qualified exchange request and determine whether the exchange proponent is qualified and whether a request is appropriate and is in the public interest.

(b) Qualified requests shall be processed in accordance with the regulations of Subpart 2200 of this title subject to the provisions of this subpart.

(c) The coal deposits offered in exchange by the Secretary shall be assessed as acceptable for leasing under the criteria of the Geological Survey, and acceptable for further consideration for leasing under the criteria in § 3420.2-3 of this title, including the unsuitability criteria in Subpart 3461 of this title.

(d) Exchange under this subpart, whether proposed by the Secretary or by a qualified exchange proponent, may include the coal estate, the entire mineral estate, or the entire mineral and surface estates in the lands conveyed to the United States or in the lands conveyed by the United States.

PART 3440—LICENSES TO MINE

Subpart 3440—Licenses to Mine

Sec.

3440.0-3 Authority.
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3440.1-2 Qualifications.
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3440.1-6 Compliance with Surface Mining Control and Reclamation Act.

AUTHORITY: 30 U.S.C. 181 et seq.

SOURCE: 44 FR 42634, July 19, 1979, unless otherwise noted.

Subpart 3440—Licenses to Mine

§ 3440.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 8 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 208).

§ 3440.1 Terms.

§ 3440.1-1 Forms.

(a) Four copies of the application for a license to mine coal for domestic needs or for a renewal of such a license shall be filed on a form approved by the Director, or a substantial equivalent of the form, in the Bureau of Land Management State Office having jurisdiction over the lands involved (43 CFR Subpart 1821).

(b) The original application or any renewal application shall be accompanied by the fee prescribed in Subpart 3473 of this title, except when the application is filed by a relief agency.

§ 3440.1-2 Qualifications.

(a) An individual, association or individuals, municipality, charitable organization or relief agency may hold a license to mine. A municipality shall file the information required under § 3472.2-5(b) of this title.

(b) A license to mine shall not be issued to a private corporation.

(c) A license to mine shall not be issued to a minor, but may be issued to a legal guardian on behalf of a minor.

§ 3440.1-3 Limitations on coal use.

(a) A license to mine may be issued to a municipality for the nonprofit mining and disposal of coal to its residents for household use only. Under such a license, a municipality may not mine coal either for its own use or for nonhousehold use such as for factories, stores, other business establishments and heating and lighting plants.

(b) Coal extracted under a license to mine shall not be disposed of for profit.

§ 3440.1-4 Area and duration of license.

(a) A license to mine for an individual or association in the absence of unusual conditions or necessity, shall be limited to a legal subdivision of 40 acres or less and may be revoked at any time. Each license to mine shall terminate at the end of 2 years from the date of issuance, unless an application for a 2 year renewal is filed and approved before its termination date.

(b) A license to mine to a municipality may not exceed 320 acres for a municipality of less than 100,000 population, 1,280 acres for a municipality between 100,000 and 150,000 population, and 2,560 acres for a municipality of 150,000 population or more. A license to mine to a municipality shall terminate at the end of 4 years from the date of issuance, unless an application for a 4 year renewal is filed and approved before the termination date.

(c) (1) The authorized officer may authorize a recognized and established relief agency of any state upon the agency's request, to take government-owned coal deposits within the state and provide the coal to localities where it is needed to supply families on the rolls of such agency who require coal for household use but are unable to pay for that coal.

(2) Tracts shall be selected in areas assessed as acceptable for mining operations and at points convenient to supply the families in a locality. Each family shall be restricted to the amount of coal actually needed for its use, not to exceed 20 tons annually.

(3) Coal shall be taken from such tracts only by those with written authority from the relief agency. All mining shall be done pursuant to such authorization. All Federal and state laws and regulations for the safety of miners, prevention of fires and of waste, etc., shall be observed. The relief agency shall see that the premises are left in a safe condition for future mining operations.

§ 3440.1-5 Payments and reports.

(a) No rental or royalty shall be required.

(b) Each holder of a license to mine shall provide an annual report to the appropriate Bureau of Land Management State Office describing all operation conducted under such license.

§ 3440.1-6 Compliance with Surface Mining Control and Reclamation Act.

Mining on a license to mine shall not commence without a permit issued by the regulatory authority unless the operation is exempt from the permit requirements under 30 CFR 700.11.

PART 3450—MANAGEMENT OF EXISTING LEASES

Subpart 3451—Continuation of Leases—Readjustment of Terms

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Subpart 3452—Relinquishment, Cancellation, and Termination

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Subpart 3453—Transfers by Assignment, Sublease or Otherwise

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AUTHORITY: 30 U.S.C. 181 et seq.; 30 U.S.C. 351-359; 30 U.S.C. 521-531; 30 U.S.C. 1201 et seq.; 42 U.S.C. 7101 et seq.; and 43 U.S.C. 1701 et seq.

SOURCE: 44 FR 42635, July 19, 1979, unless otherwise noted.

Subpart 3451—Continuation of Leases—Readjustment of Terms

§ 3451.1 Readjustment of lease terms.

(a) (1) All leases issued prior to August 4, 1976, shall be subject to readjustment at the end of the current 20-year period and at the end of each 10-year period thereafter. All leases issued after August 4, 1976, shall be subject to readjustment at the end of the first 20-year period and, if the lease is extended, each 10-year period thereafter.

(2) Any lease subject to readjustment which contains a royalty rate less than the minimum royalty prescribed in § 3473.3-2 of this title shall be readjusted to conform to the minimum prescribed in that section.

(3) Each lease shall be readjusted to provide that it is subject to the unsuitability criteria set out in Subpart 3461 of this title.

(b) The authorized officer shall notify the lessee whether or not any readjustment of terms and conditions is to be made. If feasible, the authorized officer shall so notify the lessee of any lease which becomes subject to readjustment prior to June 1, 1980, before the expiration of the current 20-year period.

(c) If the lease became subject to readjustment of terms and conditions before August 4, 1976, but the authorized officer prior to that date neither readjusted the terms and conditions nor informed the lessee whether or not a readjustment would be made, the terms and conditions of that lease shall be readjusted to conform to the requirements of the Federal Coal Leasing Amendments Act of 1976, and to conform expressly to the provisions for diligent development and continued operation in § 3475.6 of this title.

(d) (1) The authorized officer shall, prior to the expiration of the current or initial 20-year period or any succeeding 10-year period thereafter, notify the lessee of any lease which becomes subject to readjustment after June 1, 1980, whether any readjustment of terms and conditions will be made prior to the expiration of the initial 20-year period or any succeeding 10-year period thereafter. On such a lease the failure to so notify the lessee shall mean that the United States is waiving its right to readjust the lease for the readjustment period in question.

(2) In any notification that a lease will be readjusted under this subsection, the authorized officer shall prescribe when the notice of readjusted lease terms shall be transmitted to the lessee. This time shall be as soon as possible after notice that the lease shall be readjusted, but shall not be longer than 2 years after such notice. Failure to transmit the notice of readjusted lease terms in the specified period shall constitute a waiver of the right to readjust, unless the delay is caused by events beyond the control of the Department.

(e) In the notification that the lease will be readjusted, the authorized officer may require the lessee to furnish information specified in § 3422.3-4 of this title for review by the Attorney General as required by section 27(1) of the Mineral Leasing Act of 1920, as amended. If the authorized officer requests the information specified, no lease readjustment shall be effective until 30 days after the authorized officer has transmitted the required information to the Attorney General. The lease shall be subject to cancellation if the lessee fails to furnish the required information within the time allowed.

§ 3451.2 Notification of readjusted lease terms.

(a) If the notification that the lease will be readjusted did not contain the proposed readjusted lease terms, the authorized officer shall, within the time specified in the notice that the lease shall be readjusted, notify the lessee of the proposed readjusted lease terms.

(b) The notification of readjusted lease terms shall also notify the lessee that if he does not file either an objection to the proposed readjustment or a relinquishment of the lease within 60 days after receipt of notice of the proposed readjusted terms from the authorized officer, the terms of such readjustment shall be considered agreed upon.

(c) The notification of readjusted lease terms shall specify the procedures to be followed if the lessee objects to the proposed readjusted lease terms.

(d) The readjusted lease terms shall become effective either 60 days after the lessee is notified of them, or 30 days after the authorized officer transmits the required information to the Attorney General, whichever is later.

(e) In any case of an appeal from the notice of readjusted lease terms, the authorized officer may, consistent with 43 CFR 4.21(a), provide that the decision is effective pending the outcome of the appeal.

Subpart 3452—Relinquishment, Cancellation, and Termination

§ 3452.1 Relinquishment.

§ 3452.1-1 General.

Upon a satisfactory showing that the public interest shall not be impaired, the lessee may surrender the entire lease, a legal subdivision thereof, an aliquot part thereof (not less than 10 acres), or any bed of the coal deposits therein. A partial relinquishment shall describe clearly the surrendered parcel or coal deposits and give the exact acreage relinquished (see 43 CFR 3475.5(c)).

§ 3452.1-2 Where filed.

A relinquishment shall be filed in triplicate by the lessee in the Bureau of Land Management State Office having jurisdiction over the lands involved (43 CFR Subpart 1821).

§ 3452.1-3 Acceptance.

The relinquishment shall be effective on the date that the authorized officer determines that all accrued rentals and royalties have been paid and that all the obligations of the lessee under the regulations and terms of the lease have been met.

§ 3452.2 Cancellation.

§ 3452.2-1 Cause for cancellation.

(a) The authorized officer, after compliance with § 3452.2-2 of this title, may take the appropriate steps to institute proceedings in a court of competent jurisdiction for the cancellation of the lease if the lessee: (1) Fails to comply with the provisions of the Mineral Leasing Act of 1920, as amended; (2) fails to comply with the general regulations in force on the date of the lease or in force on the effective date of any readjustment of the terms and conditions of the lease, or with regulations issued after lease issuance and readjustment but made applicable under the terms of the lease; or (3) defaults in the performance of any of the terms, covenants, and stipulations of the lease.

(b) A waiver of any particular default, breach or cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other default, breach or cause of forfeiture, or for the same cause occurring at any other time.

(c) Any lease issued before August 4, 1976, on which the lessee does not meet the diligent development requirements or any lease whenever issued on which the lessee does not meet the continued operation requirements shall be subject to cancellation in whole or in part. In deciding whether to initiate lease cancellation proceedings under this subsection, the Secretary shall not consider adverse circumstances which arise out of (1) normally foreseeable costs of compliance with requirements for environmental protection; (2) commonly experienced delays in delivery of supplies or equipment; or (3) inability to obtain sufficient sales.

§ 3452.2-2 Cancellation procedure.

The lessee shall be given notice of any default, breach or cause of forefeiture and be afforded 30 days to correct the default, to request an extension of time in which to correct the default, or to submit evidence showing why the lease should not be cancelled.

§ 3452.3 Termination.

(a) Any lease issued after August 4, 1976, shall be terminated if the lessee does not meet the diligent development requirements.

(b) Should a lease be cancelled or terminated for any reason, all deferred bonus payments shall be immediately payable and all rentals and royalties, including advance royalties, already paid or due, shall be forfeited to the United States.

Subpart 3453—Transfers by Assignment, Sublease or Otherwise

§ 3453.1 Qualifications.

§ 3453.1-1 Who may transfer or receive a transfer.

(a) Leases may be transferred in whole or in part to any person, association or corporation qualified to hold such leases, except as provided by §§ 3420.1-4(b)(1)(iv) and 3420.1-4(b)(2)(ii) of this title.

(b) A minor is not qualified to hold a lease in his own name and a transfer to a minor in his own name shall not be approved. However, a transfer in behalf of a minor, including a minor heir or devisee of a lessee, to a legal guardian or trustee may be approved.

§ 3453.1-2 Number of copies required.

A single signed copy of the qualifications required under Subpart 3472 of this title is sufficient.

§ 3453.1-3 Sole party in interest.

The transferee or transferees shall comply with § 3472.2-1 of this title.

§ 3453.1-4 Attorney-in-fact.

The attorney-in-fact shall comply with § 3472.2-3 of this title.

§ 3453.1-5 Heirs and devisees.

An appropriate showing as required under § 3472.2-4 of this title shall be furnished before the heirs or devisees of a deceased holder of a lease, operating agreement, or royalty interest in a lease can be recognized by the Secretary as the new holders of a lease, agreement, or interest.

§ 3453.2 Requirements.

§ 3453.2-1 Application.

Applications for approval of any transfer of a lease or any interest in a lease, whether by direct assignment, working agreement, transfer of royalty interest, sublease, or otherwise, shall be filed within 90 days from final execution.

§ 3453.2-2 Forms and statements.

(a) Transfers of any record title interest shall be filed in triplicate.

(b) No specific form need be used for requests for approval of transfers. The application shall contain evidence of the transferee's qualifications, including a statement of Federal coal lease acreage holdings. This evidence shall consist of the same showing of qualifications required of a lease applicant by Subpart 3472 of this title.

(c) A separate instrument of transfer shall be filed for each lease when transfers involve record titles. When transfers to the same person, association, or corporation involving more than one lease are filed at the same time, one request for approval and one showing as to the qualifications of the transferee shall be sufficient.

(d) A single signed copy of all other instruments of transfer is sufficient, except that collateral assignments and other security or mortgage documents shall not be accepted for filing.

(e) Any transfer of a record title interest or assignment of operating rights shall be accompanied by the transferee's submission of the information specified in § 3422.3-4 of this title, including the holdings of any affiliate(s) (including joint ventures) of the transferees, or a statement incorporating a prior submission of the specified information by reference to the date and lease serial number of the submission, and containing any and all changes in holdings since the date of the prior submission.

(f) Any document of transfer which does not contain a description of all consideration or value paid or promised for the transfer shall be accompanied by a separate statement of all consideration or value, whether cash, property, future payments or any other type of consideration, paid or promised for the transfer.

(g) Information submitted to comply with paragraphs (e) and (f) of this section may be labeled as proprietary data and shall be so treated, consistent with the Freedom of Information Act.

§ 3453.2-3 Filing location and fee.

An application for approval of a transfer shall be filed in the Bureau of Land Management State Office having jurisdiction over the leased lands proposed for transfer (43 CFR Subpart 1821). Each application shall be accompanied by a nonrefundable filing fee (43 CFR 3473.2).

§ 3453.2-4 Bonds.

(a) If a bond is required, it shall be furnished before a lease transfer may be approved. The consent of the surety to the substitution of the transferee as principal or a new bond with the transferee as principal shall be submitted if the original lease required the maintenance of a bond. If the transfer is for part of the leased land only, it shall be for a legal subdivision and (1) the consent of the surety to the transfer and its agreement to remain bound as to the interest retained by the lessee shall be submitted, as well as (2) a new bond with the transferee as principal covering the portion of the leased lands transferred.

(b) The person transferring a lease, including a sublessee, and the surety for the lease shall continue to be responsible for the performance of any obligation under the lease until the effective date of the approval of the transfer. If the transfer is not approved, their obligation to the United States shall continue as though no such transfer had been filed for approval. After the effective date of approval, the transferee, including any sublessee, and the transferee's surety shall be responsible for all lease obligations notwithstanding any terms in the transfer to the contrary.

§ 3453.2-5 Description of lands.

The description of the lands involved in the instrument of transfer shall match the description of lands in the lease. The transfer of only a part of the lands shall be permitted only where it is demonstrated that each remaining lease area is a logical mining unit or part of a logical mining unit.

§ 3453.2-6 Effect of partial assignment.

The approval of a transfer of only a part of the lands in a lease shall create a new lease, bearing a new serial number, but containing the same terms and conditions as the original lease. A lease so created shall be deemed a logical mining unit.

§ 3453.3 Approval.

§ 3453.3-1 Conditions for approval.

No transfer shall be approved if:

(a) the transferee is not qualified to hold a lease or an interest in a lease under Subpart 3472 of this title, or under §§ 3420.1-4(b)(1)(iv) and 3420.1-4(b)(2)(ii) of this title;

(b) The lease bond is insufficient;

(c) The filing fee has not been submitted;

(d) The transferee would hold the lease in violation of the acreage requirements set out in Subpart 3472 of this title;

(e) The transfer would create an overriding royalty interest in violation of § 3473.3 of this title;

(f) The lease account is not in good standing; or

(g) The information required under § 3453.2-2 (e) or (f) of this title has not been submitted.

§ 3453.3-2 Disapproval of transfers.

(a) The authorized officer shall deny an application for approval of a transfer if any reason why the transfer cannot be approved (listed in § 3453.3-1 of this title) is not cured within the time established by the authorized officer in a decision notifying the applicant for approval why the transfer cannot be approved.

(b) (1) The authorized officer shall not approve a transfer until 30 days after the Attorney General receives the notice and statement of the transferee's coal holdings, or until the Attorney General notifies the authorized officer that the transfer would not create or maintain a situation inconsistent with the antitrust laws, whichever comes first. If the Attorney General notifies the authorized officer that the statement of coal holdings is not complete or accurate, the 30 day period shall stop running on the date of such notification and shall not resume running until the Attorney General receives the supplemental information.

(2) The authorized officer shall not approve the transfer if, during the 30 day period, the Attorney General notifies the authorized officer that the lease transfer would create or maintain a situation inconsistent with the antitrust laws, except after complying with paragraph (b)(3) of this section.

(3) If the Attorney General notifies the authorized officer that a transfer should not be approved, the authorized officer shall disapprove the transfer unless, after a public hearing is conducted on the record in accordance with the Administrative Procedure Act, the authorized officer determines that:

(i) Approval of the transfer is necessary to carry out the purposes of the Federal Coal Leasing Amendments Act of 1976;

(ii) Approval of the transfer is in the public interest; and

(iii) There are no reasonable alternatives to approval of the transfer consistent with the Federal Coal Leasing Amendments Act of 1976, the antitrust laws and the public interest.

§ 3453.3-3 Effective date.

A transfer shall take effect the first day of the month following its final approval by the Bureau of Land Management, or if the transferee requests, the first day of the month of the approval.

§ 3453.3-4 Extensions.

The filing of or approval of any transfer shall not alter any terms or extend any time periods under the lease, including those dealing with readjustment of the lease and the diligent development and continued operation on the lease.

PART 3460—ENVIRONMENT

Subpart 3461—Federal Lands Review—Unsuitability for Mining

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AUTHORITY: 30 U.S.C. 181 et seq.; 30 U.S.C. 351-359; 30 U.S.C. 521-531; 30 U.S.C. 1201 et seq.; and 43 U.S.C. 1701 et seq.

SOURCE: 44 FR 42638, July 19, 1979, unless otherwise noted.

Subpart 3461—Federal Lands Review—Unsuitability for Mining

§ 3461.0-3 Authority.

(a) These regulations are issued under the authority of the statutes listed in § 3400.0-3 of this title.

(b) These regulations primarily implement:

(1) The general unsuitability criteria in section 522(a) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(a));

(2) The Federal lands review in section 522(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(b)); and

(3) The prohibitions against mining certain lands in section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(e)).

§ 3461.0-6 Policy.

The Department shall carry out the review of Federal lands under section 522(b) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(b)) principally through land use planning assessments by the surface management agency regarding the unsuitability of Federal lands for all or certain stipulated methods of coal mining.

§ 3461.0-7 Scope.

Each criterion in § 3461.1 of this title uses the phrase "shall be considered unsuitable" as shorthand for "shall be considered unsuitable for all or certain stipulated methods of coal mining involving surface coal mining operations, as defined in § 3400.0-5(vv) of this title. The manner in which the criteria are phrased does not diminish the scope of the general underground mining exception (43 CFR 3461.2), or the obligation of the authorized officer to describe in the comprehensive land use plan or land use analysis whether lands assessed as unsuitable are unsuitable for all or only certain stipulated methods of coal mining (43 CFR 3420.2-3(c), 3461.3).

§ 3461.1 Criteria for assessing lands unsuitable for all or certain stipulated methods of coal mining.

(a) (1) *Criterion Number 1.* All Federal lands included in the following land systems or categories shall be considered unsuitable: National Park System, National Wildlife Refuge System, National System of Trails, National Wilderness Preservation System, National Wild and Scenic Rivers System, National Recreation Areas, lands acquired with money derived from the Land and Water Conservation Fund, National Forests, and Federal lands in incorporated cities, towns, and villages. All Federal lands which are recommended for inclusion in any of the above systems or categories by the Administration in legislative proposals submitted to the Congress or which are required by statute to be studied for inclusion in such systems or categories shall be considered unsuitable.

(2) *Exceptions.* (i) A lease may be issued within the boundaries of any National Forest if the Secretary finds no significant recreational, timber, economic or other values which may be incompatible with the lease; and (A) surface operations and impacts are incident to an underground coal mine, or (B) where the Secretary of Agriculture determines, with respect to lands which do not have significant forest cover within those National Forests west of the 100th Meridian, that surface mining may be in compliance with the Multiple-Use Sustained-Yield Act of 1960, the Federal Coal Leasing Amendments Act of 1976 and the Surface Mining Control and Reclamation Act of 1977.

(ii) A lease may be issued within the Custer National Forest with the consent of the Department of Agriculture as long as no surface coal mining operations are permitted.

(3) *Exemptions.* The application of this criterion to lands within the listed land systems and categories is subject to valid existing rights, and does not

apply to surface coal mining operations existing on August 3, 1977. The application of the portion of this criterion applying to land proposed for inclusion in the listed systems does not apply to lands: To which substantial legal and financial commitments were made prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(b) (1) *Criterion Number 2.* Federal lands that are within rights-of-way or easements or within surface leases for residential, commercial, industrial, or other public purposes, or for agricultural crop production on Federally owned surface shall be considered unsuitable.

(2) *Exceptions.* A lease may be issued, and mining operations approved, in such areas if the surface management agency determines that:

(i) All or certain types of coal development (e.g., underground mining) will not interfere with the purpose of the right-of-way or easement; or

(ii) The right-of-way or easement was granted for mining purposes; or

(iii) The right-of-way or easement was issued for a purpose for which it is not being used; or

(iv) The parties involved in the right-of-way or easement agree, in writing, to leasing; or

(v) It is impractical to exclude such areas due to the location of coal and method of mining and such areas or uses can be protected through appropriate stipulations.

(3) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(c) (1) *Criterion Number 3.* Federal lands affected by section 522(e) (4) and (5) of the Surface Mining Control and Reclamation Act of 1977 shall be considered unsuitable. This includes lands within 100 feet of the outside line of the right-of-way of a public road or within 100 feet of a cemetery, or within 300 feet of any public building, school, church, community or institutional building or public park or within 300 feet of an occupied dwelling.

(2) *Exceptions.* A lease may be issued for lands:

(i) Used as mine access roads or haulage roads that join the right-of-way for a public road;

(ii) For which the Office of Surface Mining Reclamation and Enforcement has issued a permit to have public roads relocated;

(iii) For which owners of occupied buildings have given written permission to mine within 300 feet of their buildings.

(3) *Exemptions.* The application of this criterion is subject to valid existing rights, and does not apply to surface coal mining operations existing on August 3, 1977.

(d) (1) *Criterion Number 4.* Federal lands designated as wilderness study areas shall be considered unsuitable while under review by the Administration and the Congress for possible wilderness designation. For any Federal land which is to be leased or mined prior to completion of the wilderness inventory by the surface management agency, the environmental assessment or impact statement on the lease sale or mine plan shall consider whether the land possesses the characteristics of a wilderness study area. If the finding is affirmative, the land shall be considered unsuitable, unless issuance of noncompetitive coal leases and mining on leases is authorized under the Wilderness Act and the Federal Land Policy and Management Act of 1976.

(2) *Exemption.* The application of this criterion to lands for which the Bureau of Land Management is the surface management agency and lands in designated wilderness areas in National Forests is subject to valid existing rights.

(e) (1) *Criterion Number 5.* Scenic Federal lands designated by visual resource management analysis as Class I (an area of outstanding scenic quality or high visual sensitivity) but not currently on the National Register of Natural Landmarks shall be considered unsuitable. A lease may be issued if the surface management agency determines that surface coal mining operations will not significantly diminish or adversely affect the scenic quality of the designated area.

(2) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(f) (1) *Criterion Number 6.* Federal lands under permit by the surface management agency, and being used for scientific studies involving food or fiber production, natural resources, or technology demonstrations and experiments shall be considered unsuitable for the duration of the study, demonstration or experiment, except where mining could be conducted in such a way as to enhance or not jeopardize the purposes of the study, as determined by the surface management agency, or where the principal scientific user or agency gives written concurrence to all or certain methods of mining.

(2) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(g) (1) *Criterion Number 7.* All districts, sites, buildings, structures, and objects of historic, architectural, archeological, or cultural significance on Federal lands which are included in or eligible for inclusion in the National Register of Historic Places, and an appropriate buffer zone around the outside boundary of the designated property (to protect the inherent values of the property that make it eligible for listing in the National Register) as determined by the surface management agency, in consultation with the Advisory Council on Historic Preservation and the State Historic Preservation Office shall be considered unsuitable.

(2) *Exceptions.* All or certain stipulated methods of coal mining may be allowed if the surface management agency determines, after consultation with the Advisory Council on Historic Preservation and State Historic Preservation Office that the direct and indirect effects of mining, as stipulated, on a property in or eligible for the National Register of Historic Places will not result in significant adverse impacts to the property.

(3) *Exemptions.* The application of this criterion to a property listed in the National Register is subject to valid existing rights, and does not apply to surface coal mining operations existing on August 3, 1977. The application of the criterion to buffer zones and properties eligible for the National Register does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(h) (1) *Criterion Number 8.* Federal lands designated as natural areas or as National Natural Landmarks shall be considered unsuitable.

(2) *Exceptions.* A lease may be issued and mining operation approved in an area or site if the surface management agency determines that:

(i) With the concurrence of the state, the area or site is of regional or local significance only;

(ii) The use of appropriate stipulated mining technology will result in no significant adverse impact to the area or site; or

(iii) The mining of the coal resource under appropriate stipulations will enhance information recovery (e.g., paleontological sites).

(3) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which includes operations on which a permit has been issued.

(i) (1) *Criterion Number 9.* Federally designated critical habitat for threatened or endangered plant and animal species, and habitat for Federal threatened or endangered species which is determined by the Fish and

Wildlife Service and the surface management agency to be of essential value and where the presence of threatened or endangered species has been scientifically documented, shall be considered unsuitable.

(2) *Exception.* A lease may be issued and mining operations approved if, after consultation with the Fish and Wildlife Service, the Service determines that the proposed activity is not likely to jeopardize the continued existence of the listed species and/or its critical habitat.

(j) (1) *Criterion Number 10.* Federal lands containing habitat determined to be critical or essential for plant or animal species listed by a state pursuant to state law as endangered or threatened shall be considered unsuitable.

(2) *Exception.* A lease may be issued and mining operations approved if, after consultation with the state, the surface management agency determines that the species will not be adversely affected by all or certain stipulated methods of coal mining.

(3) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(k) (1) *Criterion Number 11.* A bald or golden eagle nest or site on Federal lands that is determined to be active and an appropriate buffer zone of land around the nest site shall be considered unsuitable. Consideration of availability of habitat for prey species and of terrain shall be included in the determination of buffer zones. Buffer zones shall be determined in consultation with the Fish and Wildlife Service.

(2) *Exceptions.* A lease may be issued if:

(i) It can be conditioned in such a way, either in manner or period of operation, that eagles will not be disturbed during breeding season; or

(ii) The surface management agency, with the concurrence of the Fish and Wildlife Service, determines that the golden eagle nest(s) will be moved.

(iii) Buffer zones may be decreased if the surface management agency determines that the active eagle nests will not be adversely affected.

(l) (1) *Criterion Number 12.* Bald and golden eagle roost and concentration areas on Federal lands used during migration and wintering shall be considered unsuitable.

(2) *Exception.* A lease may be issued if the surface management agency determines that all or certain stipulated methods of coal mining can be conducted in such a way, and during such periods of time, to ensure that eagles shall not be adversely disturbed.

(m) (1) *Criterion Number 13.* Federal lands containing a falcon (excluding kestrel) cliff nesting site with an active nest and a buffer zone of Federal land around the nest site shall be considered unsuitable. Consideration of availability of habitat for prey species and of terrain shall be included in the determination of buffer zones. Buffer zones shall be determined in consultation with the Fish and Wildlife Service.

(2) *Exception.* A lease may be issued where the surface management agency, after consultation with the Fish and Wildlife Service, determines that all or certain stipulated methods of coal mining will not adversely affect the falcon habitat during the periods when such habitat is used by the falcons.

(n) (1) *Criterion Number 14.* Federal lands which are high priority habitat for migratory bird species of high Federal interest on a regional or national basis, as determined jointly by the surface management agency and the Fish and Wildlife Service, shall be considered unsuitable.

(2) *Exception.* A lease may be issued where the surface management agency, after consultation with the Fish and Wildlife Service, determines that all or certain stipulated methods of coal mining will not adversely affect the migratory bird habitat during the periods when such habitat is used by the species.

(o) (1) *Criterion Number 15.* Federal lands which the surface management agency and the state jointly agree are fish and wildlife habitat for resident species of high interest to the state and which are essential for maintaining these priority wildlife species shall be considered unsuitable. Examples of such lands which serve a critical function for the species involved include:

(i) Active dancing and strutting grounds for sage grouse, sharp-tailed grouse, and prairie chicken;

(ii) Winter ranges most critical for deer, antelope, and elk; and

(iii) Migration corridors for elk.

A lease may be issued if, after consultation with the state, the surface management agency determines that all or certain stipulated methods of coal mining will not have a significant long-term impact on the species being protected.

(2) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(p) (1) *Criterion Number 16.* Federal lands in riverine, coastal, and special floodplains (100-year recurrence interval) shall be considered unsuitable unless, after consultation with Geological Survey, the surface management agency determines that all or certain stipulated methods of coal mining can be undertaken without substantial threat of loss to people or property, and to the natural and beneficial values of the floodplain on the lease tract and downstream.

(2) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(q) (1) *Criterion Number 17.* Federal lands which have been committed by the surface management agency to use as municipal watersheds shall be considered unsuitable.

(2) *Exception.* A lease may be issued where:

(i) The surface management agency determines, as a result of studies, that all or certain stipulated methods of coal mining will not adversely affect the watershed to any significant degree; and

(ii) The municipality (incorporated entity) or the responsible governmental unit concurs in writing in the issuance of the lease.

(3) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(r) (1) *Criterion Number 18.* Federal lands with National Resource Waters, as identified by states in their water quality management plans, and a buffer zone of Federal lands ¼ mile from the outer edge of the far banks of the water, shall be unsuitable.

(2) *Exception.* The buffer zone may be eliminated or reduced in size where the surface management agency determines that it is not necessary to protect the National Resource Waters.

(3) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(s) (1) *Criterion Number 19.* Federal lands identified by the surface management agency, in consultation with the state in which they are located, as alluvial valley floors according to the definition in § 3400.0-5(a) of this title, the standards in 30 CFR Part 822, the final alluvial valley floor guidelines of the Office of Surface Mining Reclamation and Enforcement when published, and approved state programs under the Surface Mining Control and Reclamation Act of 1977, where mining would interrupt, discontinue, or preclude farming, shall be considered unsuitable. Additionally, when mining Federal land outside an alluvial valley floor would materially damage the quantity or quality of water in surface or underground water systems that would supply alluvial valley floors, the land shall be considered unsuitable.

(2) *Exemptions.* This criterion does not apply to surface coal mining operations which produced coal in commercial quantities in the year preceding August 3, 1977, or which had obtained a permit to conduct surface coal mining operations.

(t) (1) *Criterion Number 20.* Federal lands in a state to which is applicable a criterion (i) proposed by that state, and (ii) adopted by rulemaking by the Secretary, shall be considered unsuitable.

(2) *Exceptions.* A lease may be issued when:

(i) Such criterion is adopted by the Secretary less than 6 months prior to the publication of the draft comprehensive land use plan or land use analysis, plan, or supplement to a comprehensive land use plan, for the area in which such land is included, or

(ii) After consultation with the state, the surface management agency determines that all or certain stipulated methods of coal mining will not adversely affect the value which the criterion would protect.

(3) *Exemptions.* This criterion does not apply to lands: To which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

§ 3461.2 Underground mining exemption from criteria.

(a) Federal lands with coal deposits that would be mined by underground mining methods shall not be assessed as unsuitable where there would be no surface coal mining operations, as defined in § 3400.0-5 of this title, on any lease, if issued.

(b) Where underground mining will include surface operations and surface impacts on Federal lands to which a criterion applies, the lands shall be assessed as unsuitable unless the surface management agency finds that a relevant exception or exemption applies. Surface impacts include surface occupancy, subsidence, fire, and other environmental impacts of underground mining which are manifested on the surface.

§ 3461.3 Unsuitability assessment procedures.

§ 3461.3-1 Assessment and land use planning.

(a) (1) The authorized officer of the surface management agency shall describe in the comprehensive land use plan or land use analysis the results of the application of each of the unsuitability criteria. Exceptions should only be considered when an unsuitability condition exists in an area free of other unsuitability conditions, and for which the responsible official would otherwise regard coal mining as a likely use. Should the authorized officer further determine that conditions for an exception exist, the authorized officer shall state each area to which an exception has been applied. The authorized officer shall state in the plan or analysis those areas which could be leased only subject to conditions or stipulations to conform to the application of the criteria or exceptions.

(2) At such time as the criteria and exceptions are applied in land use planning, the authorized officer shall invite public comment thereon through a notice published in the FEDERAL REGISTER and a newspaper of general circulation in the area covered by the plan or analysis. The notice shall announce the availability of a map or maps displaying those areas:

(i) To which no criteria would apply;

(ii) To which a criterion or criteria cannot be applied pending collection of data under paragraph (b) of this section;

(iii) To which a criterion would apply;

(iv) To which a criterion would apply where the authorized officer does not intend to consider an exception; and

(v) To which a criterion and an exception thereto have been applied.

(b) (1) The authorized officer shall make his assessment on the best available data that can be obtained given the time and resources available to prepare the plan. The comprehensive land use plan or land use analysis shall include an indication of the adequacy and reliability of the data involved. Where either a criterion or exception (when under paragraph (a) of this section the authorized officer decides that application of an exception is appropriate) cannot be applied during the land use planning process because of inadequate or unreliable data, the plan or analysis shall discuss the reasons therefor and disclose when activity planning, or, in the case of criterion 19, prior to approval of a permit, the data needed to make an assessment with reasonable certainty would be generated. The authorized officer shall make every effort within the time and resources available to collect adequate and reliable data which would permit the application of criterion 19 in the land use or activity planning process. When those data are obtained, the authorized officer shall make public his assessment on the application of the criterion or, if appropriate, the exception and the reasons therefor and allow opportunity for public comment.

(2) No lease tract shall be analyzed in a final regional lease sale environmental impact statement prepared under § 3420.4-5 of this title without significant data material to the application to the tract of each criterion described in § 3461.1 of this title, except, where necessary, criterion 19. If the data are lacking for the application of a criterion or exception to only a portion of the tract, and if the authorized officer determines that it is likely that stipulations in the lease or permit to conduct surface coal mining operations could avoid any problems which may result from subsequent application of the criterion or exception, such tract may be included and analyzed in the regional lease sale environmental impact statement.

(c) Any unsuitability assessments which result either from a designation or a termination of a designation of Federal lands as unsuitable by the Office of Surface Mining Reclamation and Enforcement, or from changes warranted by additional data acquired in the activity planning process, may be made without formally revising or amending the comprehensive land use plan or analysis.

§ 3461.3-2 Consultation on unsuitability assessments.

(a) Prior to adopting a comprehensive land use plan or land use analysis which assesses Federal lands as unsuitable for coal mining, the Secretary or other surface management agency shall complete the consultation set out in § 3420.2-6 of this title.

(b) When consultation or concurrence is required in the application of any criterion or exception in § 3461.1 of this title, the request for advice or concurrence, and the reply thereto, shall be in writing. Unless another period is provided by law, the authorized officer shall specify that the requested advice, concurrence or nonconcurrence be made within 30 days. Extensions of time that do not jeopardize the planning schedule may be granted for reply.

(c) When the authorized officer does not receive a response either to a request for concurrence which is required by this subpart but not by law, or to consultation within the specified time. he or she may proceed as though concurrence had been given or consultation had occurred. If the authorized officer takes action not in accordance with advice received in consultation under this subpart, he or she shall set forth the reasons therefor in the comprehensive land use plan, land use analysis or other document containing the results of the application of the specific unsuitability criterion or exception.

§ 3461.3-3 Findings.

When the authorized officer assesses the Federal lands as unsuitable, the authorized officer shall prepare a statement for such lands on the potential coal resources, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

§ 3461.4 Relationship of leasing to unsuitability assessment.

§ 3461.4-1 Application of criteria on unleased lands.

(a) The unsuitability criteria shall be applied, prior to lease issuance, to all lands leased after the issuance of these regulations, including lands in noncompetitive (preference right) leases applications and applications for leases under Subpart 3425 of this title.

(b) The unsuitability criteria shall be initially applied either:

(1) During land use planning or the environmental assessment conducted for a specific lease application, lease modification, or preference right lease application under either § 3425.2 or § 3430.3 of this title; or

(2) During land use planning under the provisions of § 3420.1-5 of this title.

§ 3461.4-2 Application of criteria on leased lands.

(a) The unsuitability criteria shall be applied to all non-producing leases issued prior to the effective date of these regulations. The Bureau of Land Management may await the lessee's submission of a mining plan before applying the unsuitability criteria. This shall not preclude assessment of lands in an existing lease as part of the normal land use planning process.

(b) An unsuitability assessment of leased lands in the course of land use planning shall be conducted under the procedures in § 3461.3 of this title. An unsuitability assessment of leased lands during mining plan review shall, be conducted, to the extent practicable, consistent with the procedures in § 3461.3 of this title. In either case, in assessing leased lands, if any criterion applies, each exception to it shall be applied. If a criterion does apply and the conditions do not permit an exception, a further decision shall be made on whether the leased land is exempt from the criterion because of the source of the authority for the criterion. Mining may be permitted on land to which no criterion applies; on land where a criterion applies but where the conditions permit an exception; and on land to which a criterion applies, no exception applies, but which is exempt from that criterion.

(c) If a lease area or portion of a lease area is assessed to be unsuitable for all or certain stipulated methods of coal mining or the lease is found to be incompatible with the comprehensive land use plan or land use analysis, the Secretary may, except as provided in § 3461.5 of this title, negotiate with the lessee for exchange of coal lease bidding rights or other mineral leases or coal lease modifications as described in Subpart 3435 of this title. If a lease area is assessed to be unsuitable because of impacts to alluvial valley floors, the Secretary may initiate negotiations with the lessee to exchange the lease for another Federal coal lease in an area acceptable for mining operations under Subpart 3436 of this title.

§ 3461.5 Petitions to designate lands.

(a) Petitions to designate or terminate a designation of Federal lands as unsuitable for all or certain stipulated methods of surface coal mining shall be filed with and processed by the Surface Mining Officer under 30 CFR Part 769.

(b) After assessing unleased lands to be unsuitable in a comprehensive land use plan or land use analysis, the surface management agency may petition the Surface Mining Officer to designate the lands as unsuitable under 30 CFR Part 769.

(c) After assessing leased lands to be unsuitable under any criterion, its exceptions and exemptions, the surface management agency shall petition the Surface Mining Officer to designate the lands as unsuitable under 30 CFR Part 769.

(d) The completion of the unsuitability assessment by the surface management agency and filing of the petition under paragraph (b) or (c) of this section shall be deemed completion of the procedures in 30 CFR 769.14(c), (e)(1) and (g), and shall be deemed a recommendation for approval under 30 CFR 769.14(e)(2).

§ 3461.6 Exploration.

(a) Assessment of any area as unsuitable for all or certain stipulated methods of coal mining pursuant to section 522 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272) and the regulations of this subpart does not prohibit exploration of such area under subpart 3410 of this title.

(b) An application for an exploration license on any lands assessed as unsuitable for all or certain stipulated methods of coal mining shall be reviewed by the Bureau of Land Management to ensure that exploration does not harm any value for which the area has been assessed as unsuitable.

Subpart 3465—Surface Management and Protection

§ 3465.0-1 Purpose.

This subpart establishes rules for the management and protection of the surface of leased Federal lands when coal deposits are developed.

§ 3465.0-2 Objective.

This subpart is designed to ensure the use of effective and reasonable coal mining methods and the reclamation of mined lands in a manner that will minimize any adverse social, economic, and environmental effects of coal mining.

§ 3465.0-3 Authority.

These regulations are issued under the authority of the statutes listed in § 3400.0-3 of this title.

§ 3465.0-7 Applicability.

This subpart applies to leases and licenses to mine issued by the Bureau of Land Management for the development of Federal coal.

§ 3465.1 Use of surface.

(a) The operator shall use only that part of the surface area included in his lease or license to mine that has been included in an approved permit (30 CFR Part 741).

(b) Separate leases, permits, or rights-of-way under the appropriate provisions in Title 43 of the Code of Federal Regulations are required for the installation of power generation plants or commercial or industrial facilities on the lands in the lease or license to mine or for the use of mineral materials or timber from the land in the lease or license to mine.

(c) Other land uses under other authorities may be allowed on an area in a lease or license to mine provided there is no unreasonable conflict and that neither the mining operation nor the other use is jeopardized by the presence of the other.

§ 3465.2 Obligations and standards of performance.

(a) A lessee or a holder of a license to mine shall comply with the regulations in this subpart and with the terms and conditions of the lease or license to mine.

(b) A lessee or a holder of a license to mine shall comply with the applicable performance standards in 30 CFR Chapter VII, Subchapter D, and 30 CFR Part 211.

(c) When changed conditions or newly discovered information indicate that an approved permit (30 CFR Part 741) needs to be reviewed or supplemented, the authorized officer shall recommend any appropriate revision or supplement to the Surface Mining Officer.

(d) The authorized officer may, in the issuance of any lease or license to mine, develop and include additional specific stipulations in the lease or license to mine involving special management consideration.

§ 3465.3 Inspections and noncompliance.

§ 3465.3-1 Inspections.

The authorized officer, Mining Supervisor, or inspectors from the Surface Mining Officer shall have the right to enter lands under a lease or license to mine to inspect without advance notice or a search warrant, upon presentation of appropriate credentials, to determine whether the activities and conditions are in compliance with the applicable laws, regulations, notices and orders, terms and conditions of leases, licenses to mine or permits, and the requirements of the approved mining plan.

§ 3465.3-2 Discovery of noncompliance.

(a) Upon discovery of activities or conditions that are not in compliance with the terms of a lease or license to mine, or with an approved permit (30 CFR Part 741), but that do not pose a serious and imminent danger to the public or to resources and environmental quality, the authorized officer shall refer the matter to the Surface Mining Officer for remedial action, or to the Mining Supervisor on matters of exploration outside the permit area.

(b) Upon discovery of activities or conditions that are not in compliance with the terms of a lease, license to mine, or with an approved permit and that do pose a serious and imminent danger to the health and safety of the public or to resources and environmental quality, the authorized officer may order the immediate cessation of the activities or conditions provided that the Surface Mining Officer is immediately informed of the issuance of any such emergency cessation order.

§ 3465.3-3 Failure of lessee or holder of license to mine to act.

Failure of a lessee or the holder of a license to mine to comply with an immediate cessation order issued under § 3465.3-2(b) or with a written notice of noncompliance issued by the Surface Mining Officer in accordance with 30 CFR Part 211 or 30 CFR Chapter VII, Subchapter D, shall be grounds for suspension of the permit and may be grounds for cancellation of the license to mine, or in accordance with Subpart 3452 of this title, the lease.

§ 3465.4 Alternative postmining land use.

(a) When a permit applicant, who holds a lease or a license to mine, proposes any postmining land use that is substantially different from the land use prior to exploration and mining, the Surface Mining Officer, with the approval of the authorized officer of the appropriate surface management agency, may review and approve or disapprove any postmining land use in accordance with the criteria established in 30 CFR 816.133.

(b) If the Surface Mining Officer determines that a decision to approve any alternative postmining land use or alternative rehabilitation practices would constitute a major Federal action requiring an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) and that the decision has not been discussed in any environmental impact statement that may have been prepared for the issuance of the lease or the approval of the permit, a statement shall be prepared by the Surface Mining Officer.

§ 3465.5 Bonding.

(a) A lease bond for compliance with the terms of a lease or license to mine shall be furnished in accordance with the applicable provisions of Subpart 3474 of this title.

(b) The provisions governing reclamation performance bonds are found in 30 CFR Part 742.

(c) A lease or license to mine may be denied any applicant or successful bidder who has previously forfeited a bond because of failure to comply with a permit unless the affected lands covered by that plan or permit have been reclaimed without cost to the Federal Government. Nothing in this section shall modify or limit the discretionary authority of the authorized officer to deny for other causes any bid or application for a lease or license to mine.

§ 3465.6 Conduct, completion, and abandonment of operations.

All terms of the permit shall be administered under 30 CFR Chapter VII, Subchapter D, and 30 CFR Part 211.

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

Subpart 3471—Coal Management Provisions and Limitations

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AUTHORITY: 30 U.S.C. 181 et seq. and 30 U.S.C. 351-359

SOURCE: 44 FR 42643, July 19, 1979, unless otherwise noted.

Subpart 3471—Coal Management Provisions and Limitations

§ 3471.1 Land description requirements.

§ 3471.1-1 Land description and coal deposit in application.

(a) Any application for a lease, lease modification, or license to mine shall include a complete and accurate description of the lands for which the lease, lease modification, or license to mine is desired.

(b) If the land has been surveyed under the public land rectangular survey system, each application shall describe the land by legal subdivision (section, township, and range), or aliquot part thereof (but not less than 10 acres).

(c) Where protraction diagrams have been approved and the effective date has been published in the FEDERAL REGISTER, the application for land shown on such protraction diagrams and filed on or after the effective date shall contain a description of the land according to the section, township, and range shown on the approved protraction diagrams.

(d) (1) If the land has not been surveyed on the ground and is not shown on the records as covered by protraction diagrams, the application shall describe the land by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the land are in irregular form, and connected by courses and distances to an official corner of the public land surveys. In Alaska, the description of unsurveyed land shall be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by an agency of the United States such as the Geological Survey, the National Oceanic and Atmospheric Administration, or the International Boundary Commission, if the record position is available to the general public.

(2) (i) If the land is acquired land in a non-public land state which has not been surveyed under the rectangular system of public land surveys, the land shall be described as in the deed or other document by which the United States acquired title to the lands or minerals.

(ii) If the land constitutes less than the entire tract acquired by the United States, it shall be described by courses and distances between successive angle points on its boundary tying by course and distance into an identifiable point listed in the description in the deed or other document by which the United States acquired title to the land.

(iii) If the description in the deed or other document by which the United States acquired title to the land does not include the courses and distance between the successive angle points on the boundary of the desired tract, the description in the application shall be expanded to include such courses and distances.

(iv) The application shall be accompanied by a map on which the land is clearly marked showing its location with respect to the administrative unit or project of which it is a part. It is not necessary to submit a map if the land has been surveyed under the rectangular system of public land surveys, and the land description can be conformed to that system.

(v) If an acquisition tract number has been assigned by the acquiring agency to the tract, a description by tract number will be accepted.

(vi) Any accreted land not described in the deed to the United States shall be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions belong.

§ 3471.1-2 Land description in lease.

(a) All unsurveyed lands in a public land survey system state shall have a cadastral survey performed at Federal Government expense before a lease or license to mine may be issued, except for areas covered by a skeleton survey, i.e. Utah and Alaska, and the lease when issued shall be described by legal subdivision (section, township, and range), or aliquot part thereof (but no less than 10 acres).

(b) If the land is acquired land in a non-public land state, the land in the lease shall be described in the same manner provided for lease applications under § 3471.1-1(d)(2) of this title.

§ 3471.2 Effect of land transactions.

§ 3471.2-1 Disposal of land with a reservation of minerals.

(a) Where the lands included in a lease or license to mine have been or may be disposed of with reservation of the coal deposits, a lessee or the holder of a license to mine must comply fully with the law under which the reservation was made. See, among other laws, the Acts of March 3, 1909 (34 Stat. 844; 30 U.S.C. 81); June 22, 1910 (35 Stat. 583; 30 U.S.C. 83-85); December 29, 1916, as amended (39 Stat. 862; 43 U.S.C. 291-301); June 17, 1949 (63 Stat. 200); June 21, 1949 (63 Stat. 214; 30 U.S.C. 54); March 8, 1922 (42 Stat. 415; 48 U.S.C. 376-377); and October 21, 1976 (90 Stat. 2759; 43 U.S.C. 1719).

(b) Any sale or conveyance of lands subject to the Mineral Leasing Act for Acquired Lands by the agency having jurisdiction shall be subject to any lease or license to mine previously issued under that act.

(c) Leases on acquired lands outstanding on August 7, 1947, and covering lands subject to the Mineral Leasing Act for Acquired Lands may be exchanged for new leases to be issued under that act subject in each case to such appropriate conditions as may be prescribed.

(d) When: (1) The coal is to be mined by other than underground mining techniques, (2) the surface of the land is owned by a qualified surface owner, and (3) the lease is issued after August 3, 1977, the lessee shall comply with the terms of the written consent of the qualified surface owner not inconsistent with Federal and state mined land reclamation laws and regulations (43 CFR 3420.6).

§ 3471.2-2 Effect of conveyance to state or local entity.

(a) If the United States has conveyed the title to, or otherwise transferred control of the land surface containing the coal deposits to (1) any state or political subdivision, agency, or its instrumentality, (2) a college, any other educational corporation, or association, or (3) to a charitable or religious corporation or association, the transferee shall be notified by certified mail of the application for the license to mine or lease, or the scheduling of a lease sale. The transferee shall be given a reasonable period of time within which to suggest any stipulations necessary for the protection of existing surface improvements or uses to be included in the license or lease and state the supporting facts, or to file any objections to its issuance and state the supporting facts.

(b) If the state, or local entity opposes the issuance of the license to mine or lease, the facts submitted in support of the opposition must be carefully considered and each case separately decided on its merits. Opposition by the state or local entity is not a bar to issuance of the license to mine or lease for the reserved minerals in the lands. (See, however, § 3461.1(b).) In each case, the final determination on whether to issue the license to mine or lease is based on the best interests of the public.

§ 3471.3 Cancellation or forfeiture.

§ 3471.3-1 Cancellation or forfeiture for cause.

Any lease or license to mine may be cancelled or forfeited for violation of the act under which the lease or license to mine was issued, applicable Federal regulations, or the terms and conditions of the lease or license to mine (43 CFR 3452.2).

§ 3471.3-2 Protection of bona fide purchaser.

(a) The Secretary's right to cancel or forfeit a lease for any violation shall not adversely affect the title or interest of a bona fide purchaser of any lease or any interest therein. A bona fide purchaser must be a person, association, or corporation qualified to hold such lease or interest, even though the holdings of the party or parties from which the lease or interest therein was acquired or their predecessor(s) in title (including the original lessee of the United States), may have been cancelled or forfeited for any such violation.

(b) Any party to any proceedings with respect to a violation of any provision of the mineral leasing laws has the right to be dismissed promptly as a party by showing that he or she holds and acquired his or her interest as a bona fide purchaser without having violated any provisions of the mineral leasing laws. No hearing shall be necessary on such showing unless prima facie evidence is presented to indicate a possible violation on the part of the alleged bona fide purchaser.

(c) If, during any such proceeding, a party waives his or her rights under the lease, or if such rights are suspended by order of the Secretary pending a decision, rental payments and time counted against the term of the lease shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver or suspension.

§ 3471.3-3 Sale of underlying interests.

If, in any proceeding to cancel or forfeit a lease or any interest therein acquired in violation of any of the provisions of the mineral leasing laws, the lease or interest therein is cancelled or forfeited, and if there are valid options to acquire the lease or an interest therein that are not subject to cancellation, forfeiture, or compulsory disposition, this lease or interest therein shall be sold to the highest responsible qualified bidder by competitive bidding, in a manner similar to that provided for in the offering of leases by competitive bidding, subject to all outstanding valid interests and options. If less than the whole interest in the lease or interest therein is cancelled or forfeited, the partial interest shall be sold in the same way. If no satisfactory offer is obtained as a result of the competitive offering of a whole or partial interest, it may be sold by other methods that the authorized officer finds appropriate. However, the terms shall not be less favorable to the Government than those of the best competitive bid received.

§ 3471.4 Future interest, acquired lands.

An application to lease lands in which the United States has a future interest filed more than 2 years prior to the date of the vesting in the United States of the interest in the coal shall be rejected. Any application for a future interest lease outstanding at the time of the vesting in the United States of the present possessory interest in the coal shall not lapse, but shall continue to be treated under Subpart 3425 of this title. (See 43 CFR 3472.1-1(g).)

Subpart 3472—Lease Qualification Requirements

§ 3472.1 Qualifications.

[44 FR 56340, Oct. 1, 1979]

§ 3472.1-1 Qualified applicants and bidders.

A lease may be issued only to (a) citizens of the United States; (b) associations of citizens organized under the laws of the United States or of any state thereof, which are authorized to hold such interests by the statute under which they are organized and by the instrument establishing their association; (c) corporations organized under the laws of the United States or of any state thereof, including a company or corporation operating a common carrier railroad; and (d) public bodies, including municipalities.

[44 FR 42643, July 19, 1979. Redesignated at 44 FR 56340, Oct. 1, 1979]

§ 3472.1-2 Special leasing qualifications.

(a) Each applicant or bidder for a lease shall furnish a signed statement showing that, with the area applied or bid for, the applicant or bidder's interests in leases and lease applications, held directly or indirectly, do not exceed in the aggregate the acreage limitation in § 3472.1-2 of this title.

(b) A lease shall not be issued to a minor but may be issued to a legal guardian or trustee on behalf of a minor.

(c) Every company or corporation operating a common carrier railroad shall make a statement that it needs the coal for which it seeks a lease solely for its own railroad use; that it operates main or branch lines in the state in which the lands involved are located; that the aggregate acreage in the leases and applications in which it holds an interest, directly or indirectly, does not exceed 10,240 acres, and that it does not hold more than one lease for each 200 miles of its railroad lines served or to be served from such coal deposits. This last requirement excludes spurs or switches, branch lines built to connect the leased coal with the railroad, and parts of the railroad operated mainly by power not produced by steam.

(d) Aliens may not acquire or hold any direct or indirect interest in leases, except that they may own or control stock in corporations holding leases if the laws of their country do not deny similar or like privileges to citizens of the United States. If any appreciable percentage of stock of a corporation is held by aliens who are citizens of a country denying similar or like privileges to United States citizens, that corporation's application or bid for a lease shall be rejected, and that corporation's lease shall be subject to cancellation.

(e) After August 4, 1986, no lease shall be issued to any applicant or bidder that holds and has held for 10 years any lease from which coal is not being produced, except as authorized under § 3475.4 of this title, in commercial quantities as defined in § 3400.0-5(i)(1) of this title.

(f) In order to qualify for a lease on acquired lands set apart for military and naval purposes, a governmental entity shall show that it produces electrical energy for sale to the public and that it is located in the state where the lands subject to the application or bid are located.

(g) Any applicant for a lease for lands in which the United States has a future interest shall submit documentation that he or she holds, in fee or by lease, the present interest in the coal deposit subject to the application.

[44 FR 42643, July 19, 1979. Redesignated at 44 FR 56340, Oct. 1, 1979]

§ 3472.1-3 Acreage limitations.

(a)(1) No person, association, or corporation, or any subsidiary, affiliate, or person controlled by or under common control with such person, association, or corporation shall take, hold, own, or control at one time Federal coal leases, lease or lease modification applications, or bids on more than 46,080 acres in any one state and in no case on more than 100,000 acres in the United States.

(2) No person, association, or corporation holding, owning, or controlling leases, lease or lease modification ap-

plications or bids (individually or through any subsidiary, affiliate, or person under common control) on more than 100,000 acres in the United States on August 4, 1976, shall be required to relinquish any lease or lease application held on that date. However, it shall not be permitted to hold any additional interests in any further leases or lease applications until such time as its holdings, ownership, or control of leases or applications has been reduced below 100,000 acres within the United States.

(b)(1) In computing acreage held, owned, or controlled, the accountable acreage of a party owning an undivided interest in a lease shall be the party's proportionate part of the total lease acreage. The accountable acreage of a party owning an interest in a corporation or association shall be the party's proportionate part of the corporation's or association's accountable acreage. However, no person shall be charged that person's pro rata share of any acreage holdings of any association or corporation unless that person is the beneficial owner of more than 10 percent of the stock or other instruments of ownership or control of such association or corporation.

(2) On acquired lands, if the United States owns only a fractional interest in the coal resources of the lands involved, only that part of the total acreage involved in the lease, proportionate to the extent of ownership by the United States of the coal resources, shall be charged as acreage holdings. The acreage embraced in a future interest lease is not to be charged as acreage holdings until the lease for the future interest takes effect.

[44 FR 42643, July 19, 1979. Redesignated at 44 FR 56340, Oct. 1, 1979]

§ 3472.2 Filing of qualification statements.

§ 3472.2-1 Sole party in interest statement.

Every applicant or bidder for a lease or license to mine shall submit to the Bureau of Land Management State Office having jurisdiction over the lands in the application or subject to the bid (43 CFR Subpart 1821) at the time of filing the application or bid a signed statement that the applicant is the sole party in interest in the application or bid, and the lease or license to mine, if issued. If the applicant or bidder is or will not be the sole party in interest, the applicant or bidder shall set forth the names of the other interested parties in the application or bid. A separate or joint statement shall be signed by them and by the applicant or bidder setting forth the nature and extent of the interest of each in the application or bid, the nature of the agreement between them, if oral, and a copy of such agreement if written. Such separate or joint statement of interest and written agreement, if any, or a statement of the nature of such agreement, if oral, shall accompany the application or bid. All interested parties shall furnish evidence of their qualifications to hold such interest in the lease or license to mine including a statement regarding knowledge of written consent from any qualified surface owner for the area involved (43 CFR Subpart 3427).

§ 3472.2-2 Contents of qualification statement.

(a). If the applicant or bidder is an individual, he shall submit a signed statement setting forth his citizenship with each application or bid for a license to mine or lease.

(b) If the applicant or bidder is an association or partnership, the application or bid shall be accompanied by a certified copy of the articles of association or partnership, together with a statement showing (1) that the association or partnership is authorized to hold a lease or license to mine; (2) that the member or partner executing the lease or license to mine is authorized to act on behalf of the association or partnership in such matters; (3) the names and addresses of all members owning or controlling more than 10 percent of the association or partnership and their citizenship and holdings.

(c) If the applicant or bidder for a lease or license to mine is a corporation, it must submit statements showing (1) the state of incorporation; (2) that the corporation is authorized to hold leases or licenses to mine; (3) the names of the officers authorized to act on behalf of the corporation; (4) the percentage of the corporation voting stock and all of the stock owned by aliens or those having addresses outside of the United States; and (5) the name, address, citizenship, and acreage holdings of any stockholder owning or controlling 10 percent or more of the corporate stock of any class. If more than 10 percent of the stock is owned or controlled by or on behalf of aliens, or persons who have addresses outside of the United States, the corporation shall provide their names and addresses, the amount and class of stock held by each such person, and to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each such person. Any applicant who has previously filed a qualification statement may submit either a serial number reference to the record and office where the statement is filed or a new qualification statement. Applications on behalf of a corporation executed by other than an officer named under paragraph (c)(3) of this section shall be accompanied by proof of the signatory's authority to execute the instrument except in a case where an officer of a corporation signs an application on behalf of the corporation.

(d) To qualify as a small business for the purpose of bidding on any tract to be offered as part of a special opportunity lease sale for small businesses, the bidder shall submit evidence demonstrating qualification under 13 CFR Part 121.

(e) Where there is a legal guardian or trustee, the following shall be provided:

(1) A copy of the court order or other document authorizing the guardian or trustee to act as such and to fulfill in behalf of the ward or beneficiary all obligations of the lease or other obligations arising thereunder; the person submitting any such document shall in some manner indicate its authenticity;

(2) A statement by the guardian or trustee as to his or her citizenship and holdings (of acreage in Federal coal leases) in any capacity; i.e., individually and for the benefit of any person; and

(3) A statement by each ward and beneficiary as to his or her citizenship and holdings; if the ward or beneficiary is a minor, the statement shall be executed for the minor by the guardian or trustee, as appropriate.

§ 3472.2-3 Signature of applicant.

(a) Every application or bid for a lease or license to mine shall be signed by the applicant or bidder or by its attorney-in-fact. If executed by an attorney-in-fact the application or bid shall be accompanied by the power of attorney and the applicant's own statement as to citizenship and acreage holdings unless the power of attorney specifically authorizes and empowers the attorney-in-fact to make such statement or to execute all statements which may be required under these regulations.

(b) If the application or bid is signed by an attorney-in-fact or agent, it shall be accompanied by:

(1) A statement over the signature of the attorney-in-fact or agent; and

(2) A separate statement personally signed by the applicant or bidder stating whether there is any agreement or undertaking, written or oral, whereby the attorney-in-fact or agent has or is to receive any interest in the lease, if issued.

§ 3472.2-4 Special qualifications heirs and devisees (estates).

(a) If an applicant or bidder for a license to mine or a lease dies before the license to mine or lease is issued, the license or lease shall be issued: If the estate has not been probated, to the executor or administrator of the estate; if probate has been completed, or is not required, to the heirs or devisees; and if their are minor heirs or devisees, to their legal guardian or trustee.

(b) The lease or license to mine shall not issue until the following information has been filed:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person who acts as executor or administrator has the authority to act in that capacity and to act on the application or bid;

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased applicant or bidder, and are the only heirs or devisees of the deceased; and

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings.

(2) Where the executor or administrator has been discharged or no probate proceedings are required: (i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the applicant or bidder, and citing the provisions of the law of the deceased's last domicile showing that no probate is required; and (ii) a statement over the signature of each of the heirs or devisees with reference to citizenship and holdings, except that if the heir or devisee is a minor, the statement shall be over the signature of the guardian or trustee.

§ 3472.2-5 Special qualifications, public bodies.

(a) To qualify to bid for a lease on a tract offered for sale under § 3420.1-4 of this title, a public body shall submit:

(1) Evidence of the manner in which it is organized;

(2) Evidence that it is authorized to hold a lease;

(3) A definite plan as described in § 3420.1-4(b) to produce energy within 10 years of issuance of the prospective lease solely for its own use or for sale to its members or customers (except for short-term sales to others); and

(4) Evidence that the definite plan has been duly authorized by its governing body.

(b) To obtain a license to mine, a municipality shall submit with its application:

(1) Evidence of the manner in which it is organized;

(2) Evidence that it is authorized to hold a license to mine; and

(3) Evidence that the action proposed has been duly authorized by its governing body.

(c) To qualify to bid for a lease on a tract of acquired land set apart for military or naval purposes, a governmental entity shall submit:

(1) Evidence of the manner in which it is organized, including the State in which it is located;

(2) Evidence that it is authorized to hold a lease;

(3) Evidence that the action proposed has been duly authorized by its own governing body; and

(4) Evidence that it is producing electricity for sale to the public in the state where the lands to be leased are located.

(d) If the material required in paragraphs (a), (b), or (c) of this section has previously been filed, a reference to the serial number of the record in which it has been filed, together with a statement as to any amendments, shall be accepted.

Subpart 3473—Fees, Rentals, and Royalties

§ 3473.1 Payments.

§ 3473.1-1 Form of payment.

Payments shall be made in cash, or by money order, personal check, certified check, bank draft, or bank cashier's check payable to the Bureau of Land Management or Geological Survey, as appropriate.

§ 3473.1-2 Where paid.

(a) Payments for all licenses to mine shall be paid to the Bureau of Land Management State Office having jurisdiction over the land (43 CFR Subpart 1821).

(b) Payments of all rentals for nonproducing leases shall be paid to the Bureau of Land Management State Office having jurisdiction over the land (43 CFR Subpart 1821).

(c) Rentals and royalties on producing leases shall be paid to the Mining Supervisor for the area in which the lands under lease are situated.

§ 3473.1-3 When paid.

First year's rental for preference right leases shall be remitted at the time of filing the applications. First year's rental for competitive leases shall be payable when required by decision. Thereafter, rental for all leases shall be paid in accordance with the lease provisions.

§ 3473.2 Fees.

§ 3473.2-1 General fee provisions.

(a) (1) A filing fee of $250.00 shall accompany each application for a lease, exploration license or lease modification.

(2) Each original application or any renewal application for a license to mine shall be accompanied by a $10.00 filing fee.

(3) A filing fee of $50.00 shall accompany each application for approval of any transfer of a lease or an interest therein.

(b) The fee shall be retained as a service charge even if the application is rejected or withdrawn in whole or in part. An application not accompanied by the filing fee will not be accepted for filing; it will be returned to the applicant without action.

§ 3473.2-2 Exemptions from fee provisions.

No filing fee is required for:

(a) An application for a license to mine filed by a relief agency as described in Subpart 3440 of this title; or

(b) Preference right lease applications.

§ 3473.3 Rentals and royalties.

§ 3473.3-1 Rentals.

(a) The annual rental per acre or fraction thereof on any lease issued or readjusted after the promulgation of this subpart shall not be less than $3. The amount of the rental will be specified in the lease.

(b) Until a lease issued before August 4, 1976, is readjusted, the rental paid for any year shall be credited against the production or advance royalties for that year.

(c) On leases issued or readjusted after August 4, 1976, rental payments shall not be credited against royalties.

§ 3473.3-2 Royalties.

(a) (1) Royalty rates shall be determined on an individual case basis prior to lease issuance. For competitive leases, initial royalty rates shall be set out in the notice of lease sale.

(2) A lease shall require payment of a royalty of not less than 12½ percent of the value of the coal removed from a surface mine.

(3) A lease shall require payment of royalty of not less than 8 percent of the value of the coal removed from an underground mine, except that the authorized officer may determine a lesser amount, but in no case less than 5 percent if conditions warrant.

(4) The value of coal removed from a mine is defined for royalty purposes in 30 CFR 211.63.

(b) (1) The Mining Supervisor shall have the discretion, upon the request of the lessee, to authorize the payment of an advance royalty in lieu of continued operation for any particular year.

(2) The advance royalty for each lease shall be based on a percentage of the value of a minimum number of tons of coal, and the percentage shall not be less than the percentage prescribed in that lease for the production royalty. For any lease issued after August 4, 1976, the minimum number of tons shall be determined on a schedule sufficient to exhaust the leased reserves in 40 years from the approval date of the mining plan for the LMU of which the lease is a part; for any lease issued before August 4, 1976, the minimum number of tons shall be determined on a schedule sufficient to exhaust the leased reserves in 40 years from June 1, 1976.

(3) The use of advance royalties in lieu of continued operation shall not be permitted for more than a total of 10 years during the life of any lease, including the life of the lease after readjustment. The amount of any advance royalties paid on a lease issued or readjusted after August 4, 1976, shall be credited against production royalties, except that no payment of an advance royalty during the first 20 years of a lease issued after August 4, 1976, may be used as credit against production royalty due after the 20th year of that lease.

(4) The Mining Supervisor may, upon notifying the lessee six months in advance, cease to accept advance royalties in lieu of the requirement of continued operation.

(c) An overriding royalty interest or production payment shall not be created by a lease transfer, surface owner consent, or otherwise (1) that exceeds 50 percent of the rate of royalty first payable to the United States under the lease or (2) that, when added to any other overriding royalty interest, exceeds that percentage. Where an interest in the leasehold or operating agreement is transferred, the transferor may retain an overriding royalty in excess of the above limitation if he shows to the satisfaction of the Bureau of Land Management that he has made substantial investments for improvements on the land covered by the transfer that would justify a higher payment.

(d)(1) In order to encourage the greatest ultimate recovery of coal, and in the interest of conservation, the Secretary, whenever he determines it necessary to promote development or finds that the lease cannot be successfully operated under its terms may waive, suspend, or reduce the rental, or reduce the royalty but not advance royalty, on an entire leasehold, or on any deposit, tract, or portion thereof, except that in no case shall the royalty be reduced below 5 percent for underground coal.

(2) An application for any of the above benefits shall be filed in triplicate in the office of the Mining Supervisor. The application shall contain the serial number of the lease, the Bureau of Land Management State Office, the name of the record title holder and any operator or sublessee, and the description of the lands in the manner provided by § 3471.1 of this title.

(i) Each application shall include the number and location of the mine, a map showing the extent of the mining operations, a tabulated statement of the coal mined and subject to royalty for each month covering a period of not less than 12 months immediately prior to the date of filing of the application, and the average production per day mined for each month, with complete information as to why the minimum production or continued operation requirement was not met.

(ii) Each application shall contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of coal, and all facts indicating whether the mines can be successfully operated upon the royalty or rental fixed in the lease. Where the application is for a reduction in royalty, full information shall be furnished as to whether royalties or payments out of production are paid to parties other than the United States, the amounts so paid, and efforts made to reduce them, if any.

(iii) The applicant shall also file a copy of agreements between the lessee and the holders of any royalty interests to a permanent reduction of all other royalties from the leasehold so that the total royalties owed the holders of royalty interests will not be in excess of one-half of the Government royalties, should the royalty reduction be granted.

§ 3473.4 Suspension of operations, production, and payment obligations.

(a) Application by a lessee for relief from any operating and producing requirements of a lease; shall be filed in triplicate in the office of the Mining Supervisor. The Mining Supervisor is authorized to act on applications for suspension of operations or production, or both, filed pursuant to this section and to terminate suspensions of this kind which have been or may be granted.

(b) The term of any lease shall be extended by adding thereto any period of suspension of all operations and production during such term in accordance with any direction or assent of the Mining Supervisor.

(c) A suspension shall take effect as of the time specified in the direction or assent of the Mining Supervisor. Rental and minimum royalty payments will be suspended during such period of suspension of all operations and production, beginning with the first day of the lease month on which the suspension of operations and production becomes effective. If the suspension of operations and production becomes effective on any date other than the first day of the lease month, rental and minimum royalty payments shall be suspended beginning with the first day of the lease month following such effective date. The suspension of rental and minimum royalty payments shall end on the first day of the lease month in which operations or production is resumed. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty due under the lease.

(d) The minimum annual production requirements of a lease shall be proportionately reduced for that portion of a lease year for which suspension of operations and production is directed or granted by the Secretary in the interest of conservation.

(e) A suspension under this section affects only the operating and producing requirements of the lease; it does not suspend the permit and the lessee's reclamation obligations under it.

Subpart 3474—Bonds

§ 3474.1 Bonding requirements.

(a) Before a lease may be issued, one of the following forms of lease bond shall be furnished:

(1) Corporate surety bonds;

(2) Cash; or

(3) Personal lease bonds secured by negotiable U.S. bonds of a par value equal to the amount of the required surety bond, together with a power of attorney executed on a form approved by the Director.

(b) The applicant or bidder shall file the lease bond in the proper office within 30 days of receiving notice. The lease bond shall be furnished on a form approved by the Director.

(c) The bonding obligation for a new lease may be met by an adjustment to an existing bond covering another lease within the same logical mining unit.

§ 3474.2 Type of bond required.

(a) A lease bond for each lease, conditioned upon compliance with all terms and conditions of the lease, except reclamation within a permit area, shall be furnished in the amount determined by the authorized officer. The amount of the bond may be changed if the authorized officer considers such a change to be proper and necessary.

(b) For exploration licenses, a bond shall be furnished in accordance with § 3410.3-5 of this title.

[44 FR 56340, Oct. 1, 1979]

§ 3474.3 Bond conversions.

(a) The authorized officer shall notify those leaseholders who have nationwide or statewide bonds at the time of issuance of this subpart of the requirement to secure a separate lease bond for each lease in the amount determined by the authorized officer to be proper and necessary.

(b) The authorized officer may release that amount of any outstanding lease bond which relates to the performance of mining and reclamation plan permit obligations.

(c) Upon approval of a logical unit mining including more than one Federal lease, the lease bonds shall be consolidated into a single bond for the leases in the LMU.

§ 3474.4 Qualified sureties.

A list of companies holding certificates of authority from the Secretary of the Treasury under the Act of July 30, 1947 (6 U.S.C. 6-14) as acceptable sureties on Federal bonds is published annually in the FEDERAL REGISTER.

§ 3474.5 Default.

When the surety makes payment to the Government of any indebtedness due under a lease, the face amount of the surety bond and the surety's liability thereunder shall be reduced by the amount of such payment.

§ 3474.6 Termination of the period of liability.

The authorized officer shall not consent to termination of the period of liability under the lease bond unless an acceptable substitute bond has been filed or until all terms and conditions of the lease have been fulfilled.

Subpart 3475—Lease Terms

§ 3475.1 Duration of leases.

Leases shall be issued for a period of 20 years and so long thereafter as the condition of continued operation is met. If the condition of continued operation is not met the lease shall be cancelled as provided in § 3452.2 of this title.

§ 3475.2 Dating of leases.

(a) Leases will be dated and made effective the first day of the month following the date signed by the authorized officer. However, upon receipt of a prior written request, the authorized officer may date a lease to be effective on the first day of the month in which it is signed.

(b) Future interest leases shall become effective on the date of vesting of title to the minerals in the United States as stated in the lease.

§ 3475.3 Land description.

Compliance with § 3471.1 of this title is required.

§ 3475.4 Diligent development and continued operation.

(a) Each lease shall require (1) diligent development, and (2) either (i) continued operation except when operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee, or (ii) in lieu thereof, when the Secretary determines that the public interest will be served, payment of an advance royalty as described in § 3473.3-2(b) of this title.

(b) For coal leases issued before August 4, 1976, the 10 lease-year period for achieving diligent development may be increased as follows:

(1) Upon application by the lessee, the 10 lease-year period shall be extended by an amount of time equal to the period during which diligent development is, in the opinion of the Secretary, significantly impaired by (i) a strike, the elements, or casualties not attributable to the lessee, (ii) an administrative delay in the Department which is not caused by the lessee's action, and (iii) extraordinary circumstances not attributable to the lessee and not foreseeable by a reasonably prudent operator. In determining whether any of the conditions listed in paragraph (b)(1) (i), (ii), or (iii) of this section occurred and whether one or more of those conditions did, in fact, significantly impair diligent development, the Secretary's finding shall be final. The Secretary shall, however, not find to be an extraordinary circumstance under paragraph (b)(1)(iii) of this section any condition arising out of normally foreseeable business risks such as: fluctuations in prices, sales, or costs, including foreseeable costs of compliance with requirements for environmental protection; commonly experienced delays in delivery of supplies or equipment; or inability to obtain sufficient sales.

(2) Upon application by the lessee, the Secretary may grant one extension, not exceeding five years, of the 10 lease-year period because of (i) time needed to complete development of advanced technology, e.g., in situ, gasification or liquefaction processes; (ii) the magnitude of the project (ordinarily magnitude means a mine in which the production in the first year after the end of the extended period for diligent development is expected to be at least two million tons if an underground mining operation or five million tons if a surface mining operation); or (iii) a contract which is a firm commitment for the sale or use of the first one-fortieth of the LMU reserves after the 10-year period. Regardless of the reason for granting an extension, the lessee shall produce the first one-fortieth of the LMU reserves before the end of the extended term.

(c) At the time when the Secretary grants an extension under paragraphs (a) and (b) of this section, the lessee shall be notified of the revised date by which coal shall be produced in commercial quantities.

§ 3475.5 Logical mining unit.

(a) Criteria for approving or directing establishment of an LMU containing more than a single Federal lease shall be established and applied by the Geological Survey. Each lease shall automatically be considered to constitute an LMU on the effective date of the lease or June 1, 1976, whichever is later. The lease LMU may, at a later date, be enlarged by the addition of other Federal leases or with interests in non-Federal coal deposits, or both. An LMU containing any interest other than a single Federal lease shall become effective only at the direction of the Mining Supervisor, or by designation during the normal tract delineation phase of the coal activity planning process, or upon its approval by the Mining Supervisor when requested by the lessee. The Mining Supervisor shall not direct or approve the establishment of such an LMU unless it is determined that the maximum economic recovery of all Federal coal deposits in the LMU will be achieved. The boundaries of an LMU may later be changed either upon application by the lessee and with the approval of the Mining Supervisor after consultation with the authorized officer, or by direction of the Mining Supervisor after consultation with the authorized officer.

(b) When a lease is included in an LMU with other Federal leases or with interests in non-Federal coal deposits, the terms and conditions of the Federal lease or leases shall be amended so that they are consistent with the requirements imposed on the LMU of which it has become a part. In particular, diligent development, continued operation, and production in commercial quantities anywhere within the LMU, with respect to either Federal or non-Federal coal deposits, shall be considered to have occurred on each Federal lease in the LMU. The rental and royalty payments of all Federal leases in an LMU shall be combined, and advance royalties paid on any Federal lease in that LMU may, at the request of the lessee, be credited against those combined royalties.

(c) If, under the provisions of § 3452.1, the authorized officer accepts the relinquishment of any coal deposits in a lease, the LMU reserves shall be adjusted. When the Mining Supervisor is determining the LMU reserves, the lessee shall be consulted about any coal deposits subject to the lease which the lessee does not intend to mine. The lessee shall also be consulted about the rights the lessee is prepared to surrender to decrease the LMU reserves upon which the requirements of diligent development, continued operation, and production in commercial quantities will be based.

Group 3500—Leasing of Minerals Other Than Oil and Gas

PART 3500—LEASING OF MINERALS OTHER THAN OIL AND GAS; GENERAL

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Subpart 3500—Introduction—General

SOURCE: 35 FR 9699, June 13, 1970, unless otherwise noted.

§ 3500.0-3 Authorities.

The statutory authority for leasing the minerals in this part is contained in the cited acts.

(a) *Public Domain.* The Act of February 25, 1920 (41 Stat. 437; 30 U.S.C., 181 et seq.), as amended and supplemented, including the amendatory Act of August 8, 1946 (60 Stat. 950; 30 U.S.C., sec. 181 et seq.) and the Act of September 2, 1960 (74 Stat. 781; 30 U.S.C., sec. 181 et seq.), the Act of February 7, 1927 (44 Stat. 1057; 30 U.S.C., 281-287) and the Act of April 17, 1926 (44 Stat. 301; 30 U.S.C., 271-276) as amended, hereinafter called "the Act", provide for the leasing of all leasing act minerals.

(1) *Potassium.* Sections 1 to 7 of the Act of February 7, 1927, as amended (44 Stat. 1057, 30 U.S.C. secs. 281-287).

(2) *Sodium.* Sections 23 through 25 of the Act of February 25, 1920 (41 Stat. 447; 30 U.S.C. sec. 189, 261-263).

(3) *Phosphate.* Sections 9 to 12, inclusive of the Act of February 25, 1920 (41 Stat. 440, 441, 30 U.S.C. 211-214) as amended.

(4) *Sulphur.* Sections 1 to 7 of the Act of April 17, 1926 (44 Stat. 301), as amended July 16, 1932 (47 Stat. 701; 30 U.S.C. 271-276).

(5) *Asphalt.* The Act of February 25, 1920 (41 Stat. 437; 30 U.S.C., sec. 181), as amended by the Act of September 2, 1960 (74 Stat. 781; 30 U.S.C. sec. 181, 241).

(b) *Acquired lands*—(1) *Leasable.* (i) The Mineral Leasing Act for acquired lands; enacted on August 7, 1947 (61 Stat. 913; 30 U.S.C. 351-359).

(ii) The authority conferred upon the Secretary by the Act, supersedes the authority conferred upon him by section 402 of Reorganization Plan No. 3 effective July 16, 1946 (3 CFR 1946 Supp., Chapter IV), except as to leases or permits outstanding on August 7, 1947.

(2) *Solid (hardrock) minerals.* (i) Section 402, Reorganization Plan No. 3 of 1946 (60 Stat. 1099) transferred the functions of the Secretary of Agriculture and the Department of Agriculture relative to the leasing or other disposal of minerals in certain acquired lands to the Secretary of the Interior.

(ii) Section 3 of the Act of September 1, 1949 (63 Stat. 683) authorized the issuance of mineral leases or permits for the exploration, development and utilization of minerals, other than those covered by the Mineral Leasing Act for Acquired Lands, in certain lands added to the Shasta National Forest by the Act of March 19, 1948 (62 Stat. 83).

(iii) Section 3 of the Act of June 23, 1952 (66 Stat. 285), authorized the Secretary of the Interior to administer, in the manner prescribed by section 402 of Reorganization Plan No. 3 of 1946, mineral deposits other than those subject to the provisions of the Mineral Leasing Act for Acquired Lands, in that part of the Juan Jose Lobato Grant Numbered 164, which lies northerly of the Chama River (North Lobato tract) and in part of the Anton Chica Grant Numbered 29 (El Pueblo tract) as more particularly described in section 1 of the Act of June 28, 1952.

(c) *Special acts.* (1) Gold and silver in confirmed private land grants. The Act of Congress approved June 8, 1926 (44 Stat. 710; 30 U.S.C. 291-293).

(2) Asphalt in Oklahoma. The Act of June 28, 1944 (58 Stat. 483-485).

(3) Silica sands and other nonmetallic minerals in certain lands in Nevada. The Act of May 9, 1942 (56 Stat. 273) as amended by the Act of October 25, 1949 (63 Stat. 886).

(i) Act of February 27, 1927 (44 Stat. 1057).

(ii) Leasable. Mineral Leasing Act of February 25, 1920 (41 Stat. 437) as amended.

(4) Leases of sand and gravel in certain lands patented to the State of Nevada. The Act of June 8, 1926 (44 Stat. 708).

(5) Reserved minerals in lands patented to the State of California for part or other purposes. The Act of March 3, 1933 (47 Stat. 1487), as amended by the Act of June 5, 1936 (49 Stat. 1482) and the Act of June 29, 1936 (49 Stat. 2026).

(6) Certain National Forest lands in Minnesota. (i) The Act of June 30, 1950 (64 Stat. 311; 16 U.S.C. 508(b)).

(ii) Leasable. Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181) as amended.

(7) Leases for minerals in lands withdrawn for reclamation purposes within the Lake Meade Recreation Area. The Act of October 8, 1964 (78 Stat. 1039; 16 U.S.C. 460n).

(8) Prospecting and mineral leasing within National Forest Wilderness. National Forest Wilderness Act of September 3, 1964. (78 Stat. 890; 16 U.S.C. 1131-1136; 43 U.S.C. 1201.)

(9) Development of minerals in lands within Whiskeytown-Shasta-Trinity National Recreation Area. Section 6 of the Act of November 8, 1965 (Public Law 89-336; 79 Stat. 1295). (i) Solid (Hardrock) minerals. (*a*) Section 10 of the Act of August 4, 1939 as amended (53 Stat. 1196; 43 U.S.C. 387).

(*b*) Section 3 of the Act of September 1, 1949, (63 Stat. 683, 30 U.S.C. 192c).

(ii) Leasable. (*a*) Mineral Leasing Act of February 25, 1920 as amended (30 U.S.C. 181 et seq.).

(*b*) Acquired Lands Mineral Leasing Act of August 7, 1947, (30 U.S.C. 351-359).

[35 FR 9699, June 13, 1970, as amended at 44 FR 42650, July 19, 1979]

§ 3500.0-5 Definitions.

(a) *Sole party in interest.* A sole party in interest in a lease or permit or an application for a lease or a permit is a party who is and will be vested with all legal and equitable rights under the lease or permit. No one is, or shall be deemed to be, a sole party in interest with respect to a lease or permit in which any other party has any of the interests described in this section. This requirement of disclosure in an application for lease or permit of an applicant's or other parties' interest in a lease or permit, if issued, is predicated on the departmental policy that all applicants and other parties having an interest in simultaneously filed applications for permits shall have an equal opportunity for success in the drawings to determine priorities. Additionally, such disclosures provide the means for maintaining adequate records of acreage holdings of all such parties where such interests constitute chargeable acreage holdings. An "interest" in the lease or permit includes, but is not limited to, record title interests, overriding royalty interests, working interests, operating rights or options, or any agreements covering such "interests." Any claim or any prospective or future claim to an advantage or benefit from a lease or permit, and any participation or any defined or undefined share in any increments, issues, or which may be derived from or which may accrue in any manner from the lease or permit based upon or pursuant to any agreement or understanding existing at the time when the application is filed, is deemed to constitute an "interest" in such lease or permit.

(b) *Regional mining supervisor.* The Regional Mining Supervisor of the Geological Survey for the region in which the lands under permit or lease are situated.

(c) *Rule of approximation.* The rule of approximation applies where an application embraces an acreage in excess of the acreage limitation; it may be allowed for the excess acreage if exclusion of the smallest legal subdivision involved would result in a deficiency which would be greater than the excess resulting from the inclusion of such subdivision.

[35 FR 9699, June 13, 1970, as amended at 44 FR 42650, July 19, 1979]

§ 3500.1 Minerals subject to leasing.

§ 3500.1-1 Public domain and acquired minerals.

The Mineral Leasing Act, as amended, the Acquired Lands Leasing Act and the Reorganization Act provide for the leasing of deposits of chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium and sodium; phosphate; native asphalt, solid and semisolid bitumen, and bituminous rock including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried; sulphur in the States of Louisiana and New Mexico; minerals in acquired lands which would be subject to location under the United States mining laws if located in public domain lands; and for the development of sodium, magnesium, aluminum, or calcium deposits, in any of the forms described and associated with the potassium deposits.

[35 FR 9699, June 13, 1970, as amended at 44 FR 42650, July 19, 1979]

§ 3500.1-2 Reports required.

All reports concerning operations shall be filed with the Mining Supervisor.

§ 3500.1-3 Special acts.

(a) Gold and Silver in Confirmed Private Land Grants.

(b) Asphalt in Oklahoma.

(c) Nevada. (1) Silica sands and other nonmetallics, deposits of phosphate, sodium and potash in lands withdrawn by Executive Order No. 5105 of May 3, 1929.

(2) Sand and gravel in certain lands patented to the State.

(d) Reserved minerals in lands patented to the State of California for park and other public purpose.

(e) Certain National Forest lands in Minnesota. Permits the prospecting development, and utilization of those mineral resources which because of withdrawal, reservation, statutory limitation, or otherwise, are not subject to the general mining laws, and for the development and utilization for which no other authority exists.

(f) Lake Mead Recreation Area. All minerals subject to the general mining laws and mineral deposits of phosphate, potassium, and sodium.

(g) National Forest Wilderness. All leasing act minerals remain subject to leasing until midnight December 31, 1983.

(h) Whiskeytown-Shasta-Trinity National Recreation Area. Permits the leasing of nonleasable and leasable minerals in the area.

[35 FR 9699, June 13, 1970, as amended at 44 FR 42650, July 19, 1979]

§ 3500.2 Multiple development.

The granting of a permit or lease for the prospecting, development, or production of deposits of any one mineral will not preclude the issuance of other permits or leases for the same land for deposits of other minerals with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations, or selections of leased lands with a reservation of the mineral deposits to the United States.

Subpart 3501—Lands Subject to Leasing

SOURCE: 35 FR 9701, June 13, 1970, unless otherwise noted.

§ 3501.1 Public Domain.

§ 3501.1-1 Protection of preexisting rights.

(a) *Potassium.* (1) Section 6 of the Act of February 7, 1927, supra, which repealed the Act of October 2, 1917 (40 Stat. 297), excepts valid claims existing at the passage of the Act and thereafter maintained in compliance with the law under which initiated, which claims may be perfected under such law, including discovery.

(2) As to potassium mining claims, only those claims may be patented which were initiated prior to and were valid existing claims on October 2, 1917, and have since been duly maintained as such.

(b) *Sodium.* Mining claims for deposits described in Part 3500 which were valid on February 25, 1920, or on lands in San Bernardino County, Calif., on December 11, 1928, if duly maintained, may be patented under the law under which they were initiated. Otherwise such deposits may be secured only under the Mineral Leasing Act.

(c) *Phosphate.* Mining claims for deposits described in Part 3500 which were valid on February 25, 1920, if duly maintained, may be patented under the law under which they were initiated. Otherwise such deposits may be secured only under the Mineral Leasing Act.

(d) *Sulphur.* Mining claims for sulphur deposits on lands such as specified in Part 3500 situated in Louisiana which were valid on April 17, 1926, or on such lands in New Mexico, on July 16, 1932, if duly maintained, may be patented under the law under which they were initiated. Otherwise, such deposits may be secured only under the Act of April 17, 1926 (44 Stat. 301), as amended July 16, 1932 (47 Stat. 701; 30 U.S.C. 271-276).

§ 3501.1-2 Unsurveyed lands, General.

(a) All prospecting permits may be issued either by metes and bounds description or approved protraction surveys. All leases, preference right or competitive, must be surveyed prior to issuance of a lease.

(b) When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all applications to lease lands shown on such protracted surveys, filed on or after such effective date, must describe the lands only according to the section, township, and range shown on the approved protracted surveys.

(1) *Survey for leasing—Applicant's expense.* (i) Prior to the issuance of a lease based upon discovery of valuable deposits of potassium, sodium or sulphur, the survey for unsurveyed lands will be at the expense of the applicant.

(ii) A deposit of the estimated cost of making a survey of the lands as officially determined by the Bureau of

Land Management will be required. This survey will be an extension of the public land surveys over the lands applied for, and the lands to be included in the lease will be conformed to the subdivision of such survey.

(2) *Government expense.* Prior to issuance of a lease based upon discovery of coal and on all competitive leases, the survey of unsurveyed lands will be at the expense of the Government.

§ 3501.1-3 Description of lands in offer.

A complete and accurate description of the lands for which the lease is desired is required. The lands in the lease or permit shall be in reasonably compact form entirely within an area of 6 miles square or within an area not exceeding six surveyed or protracted sections in length or width.

(a) *Surveyed lands.* If the lands have been surveyed under the public land rectangular system, each application must describe the lands by legal subdivision, section, township and range.

(b) *Protracted surveys.* When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all applications to lease lands shown on such protracted surveys, filed on or after such effective date, must describe the lands only according to the section, township, and range shown on the approved protracted surveys.

(c) *Unsurveyed lands.* If the lands have neither been surveyed on the ground nor shown on the records as protracted surveys, each application must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys. In Alaska the description of unsurveyed lands must be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by any agency of the United States (such as the U.S. Geological Survey, the Coast and Geodetic Survey, or the International Boundary Commission), if the record position thereof is available to the general public.

(d) *Unsurveyed public lands adjacent to tidal waters in southern Louisiana and Alaska.* In lease offers embracing unsurveyed public lands adjacent to tidal waters in southern Louisiana and in Alaska, if the offeror finds it impractical to furnish a metes and bounds description, as required in paragraph (c) of this section with respect to the water boundary, he may, at his option, extend the boundary of his offer into the water a distance sufficient to permit complete enclosure of the water boundary of his offer by a series of courses and distances in cardinal directions (the object being to eliminate the necessity of describing the meanders of the water boundary of the public lands included in the offer). The description in the lease offer shall in all other respects conform to the requirements of paragraph (a) of this section. Such description would not be deemed for any purpose to describe the true water boundaries of the lease, such boundaries in all cases being the ordinary high watermark of the navigable waters. The land boundaries of such overall area shall include only the public lands embraced in the offer. The offeror shall agree to pay rental on the full acreage included within the description with the understanding that rights under any lease issued on that offer will apply only to the areas within that description properly subject to lease under the Act, but that the total area described will be considered as the lease acreage for purposes of rental payments, acreage limitations § 3100.1-5 and the maximum or minimum area to be included in the lease pursuant to § 3110.1-3. The tract should be shown in outline on a current quadrangle sheet published by the U.S. Geological Survey or such other map as will adequately identify the lands described.

[35 FR 9701, June 13, 1970, as amended at 44 FR 42650, July 19, 1979]

§ 3501.1-4 Acreage limitations.

(a) *Computing acreage holdings.* In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease or permit shall be such party's proportionate part of the total lease and permit acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be such party's proportionate part of the corporation's or association's accountable acreage except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation, unless he is the beneficial owner of more than 10 percent of the stock or other instruments of ownership or control of such association or corporation.

(b) *Allowable acreage.* Except as hereinafter stated, no person, association, or corporation may hold at any one time leases or permits exceeding the acreage as stated below in any one state, except for phosphate in the United States, whether directly through the ownership of such leases and permits, or interest therein, and applications therefor, or indirectly as a member of an association or as a stockholder of a corporation holding such leases and permits, or interest therein, and applications therefor. The rule of approximation applies to all applications for permits and leases.

(1) *Potassium.* A lease or permit may not exceed 2,560 acres. Holdings in permits shall not exceed 51,200 acres. Holdings in leases may not exceed 25,600 acres in one or more mining units.

(2) *Sodium.* A lease or permit may not include more than 2,560 acres. Holdings in permits and leases shall not exceed 5,120 acres.

(3) *Phosphate.* A lease or permit may not exceed 2,560 acres. Holdings in leases and permits shall not exceed 20,480 acres in the United States.

(4) *Sulphur.* A lease or permit may not include more than 640 acres. Holdings may not include more than three permits or leases.

(5) *Asphalt.* A lease may not include more than 2,560 acres. Holdings may not include more than 7,680 acres in any one State irrespective of the number of leases.

[35 FR 9701, June 13, 1970, as amended at 44 FR 42650, July 19, 1979]

§ 3501.1-5 Exceptions.

No lands within the boundaries of the following areas in the public domain shall be leased under the provisions of this part:

(a) National parks and monuments.

(b) Indian reservations.

(c) Incorporated cities, towns, and villages.

(d) Naval petroleum and oil shale reserves.

(e) Lands acquired under the Act of March 1, 1911 (36 Stat. 961; 16 U.S.C. 513-519) known as the Appalachian Forest Reserve Act, or other acquired lands.

[42 FR 25469, May 17, 1977, as amended at 44 FR 42650, July 19, 1979]

§ 3501.1-6 Rejections.

Applications for permits or leases which are filed for lands not available for prospecting or leasing, or which do not comply with the regulations in this part as to acreage limitations and land descriptions will be rejected.

§ 3501.2 Acquired lands.

§ 3501.2-1 Lands and deposits not subject to leasing.

The following acquired lands are not subject to leasing:

(a) Lands acquired for the development of their mineral deposits;

(b) Lands acquired by foreclosure or otherwise for resale;

(c) Lands acquired as surplus under the Surplus Property Act of October 3, 1944 (58 Stat. 765; 50 U.S.C. 1611, et seq.);

(d) Lands in incorporated cities, towns, and villages;

(e) Lands in national parks and monuments; and

(f) Lands which are tide lands or submerged coastal lands, within the Continental Shelf adjacent or littoral to any part of land within the jurisdiction of the United States.

(g) Lands in Naval Petroleum Reserves, The National Petroleum Reserve in Alaska, and oil shale reserves.

[42 FR 25469, May 17, 1977, as amended at 44 FR 42650, July 19, 1979]

§ 3501.2-2 Sale or conveyance of lands.

Any sale or conveyance of lands subject to the act by the agency having jurisdiction thereof, shall be subject to any lease or permit theretofore issued under the act.

§ 3501.2-3 Outstanding permits and leases.

(a) *Acquired lands*—(1) *Leasable minerals.* Phosphate, sodium, potassium, sulphur, or oil shale leases outstanding on August 7, 1947, and which cover lands subject to the act, may be exchanged for new leases to be issued under the act subject, in each case, to such appropriate conditions as may be prescribed.

(2) *Solid (hardrock) minerals.* Prospecting permits and leases, heretofore issued by the Department of Agriculture will be continued to be administered by the Department of the Interior in accordance with the regulations under which they were issued.

[35 FR 9701, June 13, 1970, as amended at 44 FR 42650, July 19, 1979; 44 FR 56340, Oct. 1, 1979]

§ 3501.2-4 Description of lands in application.

(a) *Surveyed lands.* If the land has been surveyed under the rectangular system of public land surveys, and the description can be conformed to that system, the land must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land surveys, any boundaries which do not so conform must be described by metes and bounds, giving courses and distances between the successive angle points with appropriate ties to the nearest existing official survey corner. If not so surveyed and if within the area of the public land surveys, the land must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected with a reasonably nearby corner of those surveys by courses and distances.

(b) *Lands not surveyed under rectangular survey.* (1) If the lands have not been surveyed under the rectangular system of public land surveys, and the tract is not within the area of the public land surveys, it must be described as in the deed or other document by which the United States acquired title to the lands or minerals.

(2) If the desired land constitutes less than the entire tract acquired by the United States, it must be described by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the land.

(3) In addition, if the description in the deed or other document by which the United States acquired title to the lands does not include the courses and distances between the successive angle points on the boundary of the desired tract, the description in the offer must be expanded to include such courses and distances.

(4) Application or offer must be accompanied by a map upon which the desired lands are clearly marked showing their location with respect to the administrative unit or project of which they are a part (such map need not be submitted where the desired lands have been surveyed under the rectangular system of public land surveys, and the land description can be conformed to that system).

(5) If an acquisition tract number has been assigned by the acquiring agency to the identical tract desired, a description by such tract number will be accepted in such offer or application.

(c) *Accreted lands.* Where an offer or application includes any accreted lands that are not described in the deed to the United States, such accreted lands must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, and connected by courses and distances to an angle point on the perimeter of the acquired tract to which the accretions appertain.

§ 3501.2-5 Acreage limitations.

(a) *Restrictions on holdings.* The amount of acquired lands acreage that may be held under lease or permit either directly or indirectly, individually or as a member of an association or a corporation may not be in excess of the amount of public domain acreage for the same minerals permitted to be held under the mineral leasing laws. Public domain lease holdings shall not be charged against acquired lands lease holdings; such respective holdings shall not be interchangeable. Where the United States owns only a fractional interest in the mineral resources of the lands involved, only that part of the total acreage involved in the lease which is proportionate to the ownership by the United States of the mineral resources therein shall be charged as acreage holdings. The acreage embraced in a future interest lease is not to be charged as acreage holdings until the lease for the future interest takes effect.

(b) *Allowable acreage*—(1) *Leasable minerals.* See § 3501.1-4(b).

(2) *Locatable minerals.* (*Minerals other than those subject to the 1920 Act as amended.*) (i) No applicant may hold more than 20,480 acres under prospecting permit and lease of which not more than 10,240 acres may be held under lease, provided, however, that the Secretary may authorize a lessee to hold under lease an additional 10,240 acres of land if he finds, upon a satisfactory showing submitted by the lessee that such additional acreage is necessary to promote the orderly development of mineral resources and does not result in undue control of the mineral to be mined, removed and marketed, but in no event shall a lessee hold in excess of 10,240 acres of leased land for the mining of any dominant single mineral, nor shall any person at any one time hold more than 20,480 acres under permit and lease in any one State.

(ii) A prospecting permit may not include more than 2,560 acres, and will be issued to the first qualified applicant. The lands in the permit must be entirely within an area of six miles square or within an area not exceeding six surveyed sections in length or width. An application for a prospecting permit which covers lands that are not located entirely within an area of six miles square or an area of six surveyed sections in length or width will be rejected in its entirety.

§ 3501.2-6 Consent of administering agency.

(a) *Jurisdiction of lands.* Leases or permits may be issued only with the consent of the head or other appropriate official of the executive department, independent establishment or instrumentality having jurisdiction over the lands containing the deposits, or holding a mortgage or deed of trust secured by such lands, and subject to such conditions as that official may prescribe to insure adequate utilization of the lands for the primary purpose for which they were acquired or are being administered. Such consent to prospecting shall not be deemed to vest in the prospector an exclusive right to exploration or a preference right to a lease under this part.

(b) *Jurisdiction of surface.* Where the United States has conveyed the title to, or otherwise transferred the control of the surface of the lands containing the deposits to any State or any political subdivision, agency, or instrumentality thereof, or a college or any other educational corporation, or association, or a charitable or religious corporation or association, such party shall be given written notification by certified mail of the application for the permit or lease, and shall be afforded a reasonable period of time within which to suggest any stipulations deemed by it to be necessary for the protection of existing surface improvements or uses to be included in the permit or lease, setting forth the facts supporting the necessity thereof, and also to file any objections it may have to the issuance thereof. Where such party opposes the issuance of the permit or lease, the facts submitted in support must be carefully considered and each case separately decided on its merits. However, such opposition affords no legal basis or authority to refuse to issue the permit or lease for the reserved minerals in the lands; in such case, the final determination whether to issue the permit or lease depends upon whether the interests of the United States would best be served thereby.

(c) *Identification of administering agency.* All applications and offers for permits or leases should name if practicable, the Government agency from which consent to issuance of a permit or lease must be obtained, or the agency that may have title records covering the ownership of the mineral interest involved, and identify the project, if any, of which the land is a part. Permits or leases to which such consent is necessary will not be issued until the lessee or permittee executes such stipulations as may be required by the consenting agency.

(d) *Right to stipulate.* Lands under jurisdiction of the Department of Agriculture. The Reorganization Plan and the Acts provide that mineral development may be permitted only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe to protect the purposes for which the lands were acquired or are being administered. An application will be rejected if the Secretary of Agriculture does not give his consent. Any lease permit, or other instrument granting the right to mine or remove the minerals will contain such stipulations as may be specified by that official in order to protect such purposes. All matters relating to the surface of the land and its protection, including responsibility for securing compliance with all applicable regulations and procedures of the Department of Agriculture, the terms of the lease relating to the surface and surface resources, and the stipulations specified for the protection of the land, are functions of the Department of Agriculture. Lessees and permittees will comply with the applicable regulations of the Secretary of Agriculture and will consult with the authorized representative of the Secretary of Agriculture as to matters relating to the surface.

§ 3501.2-7 Lands subject to leasing.

(a) In acquired lands under the Act of March 4, 1917 (39 Stat. 1134, 1150; 16 U.S.C. 520), Title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 195, 200, 202, 205; 40 U.S.C. 401, 403(a) and 408), the 1935 Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115, 118), section 55 of Title I of the Act of August 24, 1935 (49 Stat. 750, 781), the Act of July 22, 1937 (50 Stat. 522, 525, 530), as amended July 28, 1942 (56 Stat. 725; 7 U.S.C. 1011(c) and 1018).

(b) In acquired lands, except Indian lands and lands in national parks and monuments, under the jurisdiction of the bureaus of the Department of the Interior where authorized by law.

(c) In those lands added to the Shasta National Forest by the Act of March 19, 1948 (62 Stat. 83), which were acquired with funds of the United States, or lands received in exchange therefor.

(d) In those portions of the Juan Jose Lobato Grant (North Lobato tract) and of the Anton Chica Grant (El Pueblo tract) in New Mexico, mentioned in paragraph (c) of this section.

§ 3501.3 Withdrawn, reserved or segregated.

§ 3501.3-1 Lands and deposits not subject to leasing.

See §§ 3501.1-5 and 3501.2-1.

§ 3501.3-2 Consent of administrator.

(a) *Requirements when lands are in a withdrawal.* Where any part of the lands embraced in an application for lease, permit or license is within a withdrawal which does not preclude disposition of the deposits, the head of the Government agency having control will be called upon for a report as to whether there is any objection to the granting of a lease, permit or license. In cases where such agency recommends that a special stipulation be furnished by the applicant to protect the interest of the United States, an appropriate stipulation will be included in the lease, permit or license.

(b) *Requirements when lands are reserved or segregated.* (1) General statement. With respect to lands embraced in a reservation or segregated for any particular purpose the lessee shall conduct operations in conformity with such requirements as may be made by the Bureau of Land Management for the protection and use of the land for the purpose for which it was reserved or segregated, so far as may be consistent with the use of the land for the purpose of the lease, which latter shall be regarded as the dominant use unless otherwise provided or separately stipulated.

(2) Lands disposed of with a reservation of minerals. Where the lands included in a permit, lease or license have been or may be disposed of with reservation of the deposits, a permittee, lessee or licensee must make full compliance with the law under which reservation was made.

(i) *Potassium.* See the Acts of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121-123); December 29, 1916 (39 Stat. 862; 43 U.S.C. 291-301); June 17, 1949 (63 Stat. 201); June 21, 1949 (63 Stat. 215; 30 U.S.C. 54); and August 13, 1954 (68 Stat. 708); and other laws authorizing such reservations.

(ii) *Sodium.* See the Acts of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121-123); December 29, 1916 (39 Stat. 862; 43 U.S.C. 291-301); June 17, 1949 (63 Stat. 201); June 21, 1949 (63 Stat. 215; 30 U.S.C. 54); and August 13, 1954 (68 Stat. 708); and other laws authorizing such reservations.

(iii) *Sulphur.* Where lands included in a permit or lease have been disposed of with reservation of sulphur deposits, a permittee or lessee must make full compliance with the law under which such reservation was made. See the Acts of March 4, 1933 (47 Stat. 1570; 30 U.S.C. 124); December 29, 1916 (39 Stat. 862; 43 U.S.C. 291-301); June 17, 1949 (63 Stat. 201); June 21, 1949 (63 Stat. 215; 30 U.S.C. 54); and August 13, 1954 (68 Stat. 708); and other laws authorizing such reservations.

(iv) *Asphalt in Oklahoma.* See the Act of February 19, 1912 (37 Stat. 67), and the Act of August 3, 1955 (69 Stat. 445), and the regulations thereunder in Subpart 2781 of this chapter.

(c) *Special Stipulations.* Applicants for permits, leases, and licenses for lands, the surface control of which is under the jurisdiction of the Department of Agriculture, will be required to consent to the inclusion therein of the stipulation on a form approved by the Director. Where the lands have been withdrawn for reclamation purposes the offeror or applicant will be required to consent to the inclusion of a stipulation on the approved forms. If the land is potentially irrigable, or if the land is within the flow limits of a reservoir site or within the drainage area of a constructed reservoir, or if withdrawn for power purposes, or where the lands have been withdrawn as Game Range Lands, Coordination Lands, or Alaska Wildlife Areas, the offeror or applicant will be required to consent to the inclusion of a stipulation on an approved form. Additional conditions may be imposed to protect the land withdrawn if deemed necessary by the agency having jurisdiction over the surface.

[35 FR 9701, June 13, 1970, as amended at 44 FR 42650, July 19, 1979]

§ 3501.3-3 Transfer of surface control.

Where the United States has conveyed the title to, or otherwise transferred the control of the surface of the lands containing the deposits to any State or any political subdivision, agency or instrumentality thereof, or a college or any other educational corporation, or association, or a charitable or religious corporation or association, such party shall be given written notification by certified mail of the application for the permit or lease, and shall be afforded a reasonable period of time within which to suggest any stipulations deemed by it to be necessary for the protection of existing surface improvements or uses to be included in the permit or lease, setting forth the facts supporting the necessity thereof, and also to file any objections it may have to the issuance thereof. Where such party opposes the issuance of the permit or lease, the facts submitted in support must be carefully considered and each case separately decided on its merits. However, such opposition affords no legal basis or authority to refuse to issue the permit or lease for the reserved minerals in the lands; in such case, the final determination whether to issue the permit or lease depends upon whether the interests of the United States would best be served thereby.

§ 3501.4 Special leasing acts.

§ 3501.4-1 Lands and deposits subject to prospecting and leases.

See Subpart 3560.

§ 3501.4-2 Consent of administrator.

See Subpart 3560.

Subpart 3502—Qualification Requirements

SOURCE: 35 FR 9704, June 13, 1970, unless otherwise noted.

§ 3502.1 General.

Every applicant for a permit or lease must show that, with the area applied for, his or its interest or interests in such permits, leases and applications therefor, directly or indirectly, do not exceed in the aggregate the acreage limitation in § 3501.1-4.

§ 3502.1-1 Who may hold interests.

A mineral prospecting permit and mineral lease may be issued only to citizens of the United States; associations of such citizens organized under the laws of the United States or of any State thereof, which are authorized to hold such interests by the statute under which organized and by the instrument establishing the association; corporations organized under the laws of the United States or of any State thereof; including a company or corporation operating a common-carrier railroad, and to municipalities.

(a) *Aliens.* Aliens may not acquire or hold any direct or indirect interest in permits or leases, except that they may own or control stock in corporations holding permits or leases if the laws of their country do not deny similar or like privileges to citizens of the United States. If any appreciable percentage of the stock of a corporation is held by aliens who are citizens of a country denying similar or like privileges to U.S. citizens, its application will be denied.

(b) *Minors.* A mineral lease or permit will not be issued to a minor but leases or permits may be issued to a legal guardian or trustee in his behalf. See § 3502.8.

[35 FR 9704, June 13, 1970, as amended at 44 FR 42650, July 19, 1979; 44 FR 56340, Oct. 1, 1979]

§ 3502.1-2 Bona fide purchasers.

(a) *Provisions of statute.* The Act of September 21, 1959 (73 Stat. 571), as amended by the Act of September 2, 1960 (74 Stat. 781; Pub. L. 86-705), provides that the right to cancel or forfeit for violation of any of the provisions of this Act shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, option to acquire a lease or an interest therein, or permit which lease, interest, option, or permit was acquired and is held by a qualified person, association, or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease, interest, option, or permit was acquired, or of his predecessor in title (including the original lessee of the United States) may have been cancelled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation.

(b) *Sale of underlying interests.* If in any proceeding to cancel or forfeit a lease, interest in a lease, option to acquire a lease or an interest therein, or a permit acquired in violation of any of the provisions of this Act, an underlying lease, interest, option, or permit is cancelled or forfeited to the Government and there are valid interests therein or valid options to acquire the lease or an interest therein which are not subject to cancellation, forfeiture, or compulsory disposition, such underlying lease interest, option, or permit shall be sold to the highest responsible, qualified bidder by competitive bidding in a manner similar to that provided for in the offering of leases by competitive bidding subject to all outstanding valid interests therein and valid options pertaining thereto. However, if less than the whole interest in the lease, interest, option, or permit is cancelled or forfeited, such partial interest shall likewise be sold in similar manner. If no satisfactory offer is obtained as a result of the competitive offering of such whole or partial interests, such interests may be sold by such other methods as the authorized officer deems appropriate, but on terms not less favorable to the Government than those of the best competitive bid received.

(c) *Right to dismissal.* Effective as of September 21, 1959, any party to any proceedings with respect to a violation of any provision of the Act, whether initiated prior or subsequent to that date, has the right to be dismissed promptly as such a party by showing that he holds and acquired the interest involving him as a bona fide purchaser without having violated any provisions of the Act. No hearing shall be necessary upon such showing unless prima facie evidence is presented to indicate a possible violation on the part of the alleged bona fide purchaser.

(d) *Suspension.* If during any such proceeding a party thereto files a waiver of his rights under his lease to drill or to assign his interest thereto, or if such rights are suspended by order of the Secretary pending a decision, payments of rentals and the running of time against the term of the lease or leases involved shall be suspended as of the first day of the month following the filing of the waiver or the Secretary's suspension until the first day of the month following the final decision in the proceeding or the revocation of the waiver for suspension.

§ 3502.1-3 Where filed.

(a) *Proper office.* All applicants must file their statements of qualification and evidence thereto in the proper office unless previously filed, in which event a reference by serial number to the record and the proper office in which filed, together with a statement as to any amendments, will be accepted.

(b) *Exception.* If applicant is an individual he must submit with each application a statement of his citizenship. See § 3502.2-1.

3502.2 Individuals—Statement of citizenship.

If the applicant is an individual, be/she shall submit with each application for permit or lease a statement over his/her own signature setting forth the applicant's citizenship.

[44 FR 56340, Oct. 1, 1979]

§ 3502.3 Associations including partnerships.

§ 3502.3-1 Statements.

(a) If an applicant for a permit or lease is an association (including a partnership), it must submit a certified copy of the articles of association and a statement as to their citizenship and holdings as required of an individual.

(b)(1) If the offeror is an association which meets the requirements of § 3502.1-1 of this chapter, the offer shall be accompanied by a certified copy of its articles of association or partnership, together with a statement showing (i) that it is authorized to hold leases; (ii) that the member or partner executing the lease is authorized to act on behalf of the association in such matters; and (iii) the names and addresses of all members owning or controlling more than 10 percent of the association. A separate statement from each person owning or controlling more than 10 percent of the association, setting forth his citizenship and holdings, shall also be furnished.

(2) If the offer is made by an association which does not meet the requirements of § 3502.1-1 of this chapter the same showing as to citizenship and holdings of its members shall be made as is required of an individual.

§ 3502.3-2 Evidence previously filed.

Where articles of association, including partnership agreements, have previously been filed pursuant to regulations in this section, a reference by serial number to the record in which such evidence has previously been filed, together with a statement as to any amendments thereof will be accepted.

§ 3502.4 Corporations.

§ 3502.4-1 Statements.

(a) If the applicant is a corporation, it must submit statements showing (1) the state in which it is incorporated; (2) that it is authorized to hold leases for mineral deposits, (3) names of the officers authorized to act in such matters in behalf of the corporation; (4) the precentage of the corporation voting stock and all of the stock owned by aliens or those having addresses outside of the United States; and (5) the name, addresses, citizenship, and acreage holdings of any stockholder owning or controlling 10 percent or more of the corporate stock of any class. If more than 10 percent of the stock is owned or controlled by or on behalf of aliens, or persons who have addresses outside of the United States, the corporation must give their names and addresses, the amount and class of stock held by each, and to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each.

(b) *Exceptions.* (1) Requirements for alien interests or persons having addresses outside of the United States. Regulations for potassium, sodium, sulphur and asphalt in Oklahoma state that if more than 10 percent of the stock is owned or controlled by or on behalf of aliens or persons who have addresses outside of the United States, additional qualifications may be required.

§ 3502.5 Guardian or trustee.

§ 3502.5-1 Statements.

(a) Where there is a legal guardian or trustee: A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the citizenship and holdings of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of other minors similar to that required by § 3502.8.

§ 3502.5-2 Evidence previously filed.

Where evidence of the authority to act of a guardian, trustee, an executor or administrator, have previously been filed pursuant to the regulations in this section, a reference by serial number to the record in which such evidence has previously been filed, together with a statement as to any amendments thereof will be accepted.

§ 3502.6 Attorney-in-fact.

§ 3502.6-1 Statements.

(a) *Evidence required.* (1) All applications must be signed by the applicant or his attorney-in-fact, and if executed by an attorney-in-fact must be accompanied by the power of attorney and the applicant's own statement as to his citizenship and acreage holdings unless the power of attorney specifically authorized and empowers the attorney-in-fact to make such statements or to execute all statements which may be required under these regulations.

(2) Applications on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument.

(3) Except in a case where an officer of a corporation signs an application on behalf of the corporation, as to which see § 3502.4 evidence of the authority of the attorney in fact to sign the application and permit, if the application is signed by such attorney on behalf of the applicant.

§ 3502.6-2 Evidence previously filed.

Where such power of attorney has been filed in the same proper office where the application is filed reference thereto by serial number of the record in which it has been filed may be made upon the filing of subsequent applications.

§ 3502.7 Showing as to sole party in interest.

Every applicant for lease or permit must submit at the time of filing a signed statement that he is the sole party in interest in the application and the lease or permit, if issued; if not, he shall set forth the names of the other interested parties. If there are other interested parties in the application, a separate or joint statement must be signed by them and by the applicant setting forth the nature and extent of the interest of each in the application, the nature of the agreement between them, if oral, and a copy of such agreement if written. Such separate or joint statement of interest and written agreement, if any, or a statement of the nature of such agreement, if oral, must accompany the application. Simultaneously, all interested parties must furnish evidence of their qualifications to hold such lease interest or permit.

§ 3502.8 Heirs and devisees (estates).

§ 3502.8-1 General.

If an applicant for a permit, an applicant for a preference right lease, or a successful bidder to a competitive lease dies before the permit or lease is issued, the permit or lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(a) *Probate not completed.* Where probate of the estate has not been completed:

(1) *Evidence to sign.* Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(2) *Evidence of heirship.* Evidence that the heirs or devisees are the heirs or devisees of the deceased permittees and are the only heirs or devisees of the deceased.

(3) *Evidence as to citizenship and holdings.* A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by §§ 3502.1 and 3502.2-1.

(b) *Probate proceedings not required.* Where the executor or administrator has been discharged or no probate proceedings are required.

(1) Evidence of will or decree of distribution. A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the permittees and citing the provisions of the law of the deceased's last domicile showing that no probate is required.

(2) A statement over the signature of each of the heirs or devisees with reference to citizenship and holdings similar to that required by §§ 3502.1 and 3502.2-1 except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

Subpart 3503—Fees, Rentals, and Royalties

SOURCE: 35 FR 9706, June 13, 1970, unless otherwise noted.

§ 3503.0-3 Authorities.

Fees—Act of August 31, 1951 (5 U.S.C. 140). Rentals see § 3500.0-3.

§ 3503.1 Payments.

§ 3503.1-1 Form of remittance.

Remittances must be submitted as cash, money order, check, certified check, bank draft or bank cashier's check.

§ 3503.1-2 When remitted.

(a) *Proper office.* Unless otherwise directed by the Secretary, rentals under all leases and permits issued under the act shall be paid to the Authorized officer of the proper office. All remittances to Bureau of Land Management offices shall be made payable to the Bureau of Land Management.

(b) *Geological Survey.* Rentals and royalties on producing mining leases are to be paid to the Regional Mining Supervisor. All remittances to Survey offices shall be made payable to the U.S. Geological Survey.

§ 3503.1-3 When remitted.

First year rental must be remitted at the time of filing applications for prospecting permits and preference right leases. First year rental for competitive leases will be required by decision. Thereafter, rental for all prospecting permits and leases will be required in accordance with permit and lease provisions. Applications for extension of permits must be accompanied by annual rental payment.

§ 3503.2 Fees.

§ 3503.2-1 General statement.

Applications for prospecting permits, leases or licenses, extension of permits, renewals, modifications, and for approval of any instrument transferring a lease or permit or interest therein, must be accompanied by a filing fee of $10 for each application. Such a fee will be retained as a service charge even though an application should be rejected or withdrawn in whole or in part. An application not accompanied by the filing fee will not be accepted.

§ 3503.2-2 Exceptions.

Preference right lease applications.

[35 FR 9706, June 13, 1970, as amended at 44 FR 42650, July 19, 1979]

§ 3503.3 Rentals and royalties.

§ 3503.3-1 General statement rentals.

(a) *Permits (Prospecting)*. A prospecting permit application must be accompanied by full payment of the first year's rental at the rate of 25 cents per acre or fraction thereof, but no less than $20 per year, the rental payment to be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest subdivision. Thereafter, payment of the annual rental shall be made on or before the anniversary date of the permit.

(b) *Leases*—(1) *Phosphate*. Annual rental for phosphate leases shall be not less than 25 cents per acre or fraction thereof for the first year, not less than 50 cents for the second and third years, and not less than $1 for each and every year thereafter during the continuance of the lease. The rental paid for any year shall be credited against the royalties for that year.

(2) *Potassium and sodium*. Rental for potassium and sodium leases is 25 cents per acre or fraction thereof for the first calendar year or fraction thereof. Rental for succeeding years is payable on or before January 1, the beginning of the calendar year. Annual rental per acre or fraction thereof is 50 cents for the second, third, fourth, and fifth years, and $1 for the sixth and each succeeding year during the continuance of the lease. The rental for any year will be credited against the first royalties as they accrue under the lease during the year for which rental was paid.

(3) *Sulphur*. Sulphur leases shall provide for payment, in advance, of an annual rental of 50 cents for each acre or part thereof covered by the lease, beginning with the date of the lease, such rental for any year to be credited against the first royalties as they accrue under the lease during the year for which the rental was paid.

(4) *Asphalt*. The annual rental will be 50 cents per acre or fraction thereof payable annually in advance.

(5) *Solid (hardrock) minerals*. An application for preference right lease must be accompanied by a rental payment of $1 for each acre or fraction thereof included in the application, but not less than $20. In no event shall the first year's rental on any lease be less than $20.

(c) *Use permits*. The annual rental for a sodium or phosphate use permit will be not less than $1 per acre or fraction thereof.

(d) *Licenses*. No rental payment required.

[35 FR 9706, June 13, 1970, as amended at 36 FR 7053, Apr. 14, 1971; 44 FR 42650, July 19, 1979]

§ 3503.3-2 General statement royalties.

(a) *Royalty on production*. Royalty rates will be determined on an individual case basis prior to lease issuance. Such rates will be set out in the notice of competitive lease offer.

(1) *Exceptions*—(i) *Sulphur*. Leases based upon discovery of valuable sulphur deposits under a sulphur permit shall provide for a royalty of 5 percent of the quantity or gross value of the output of sulphur at the point of shipment to market. Leases for lands known to contain valuable deposits of sulphur and not covered by sulphur permits or leases shall provide for such royalty as will be determined prior to the issuance of the lease, but in no case shall the royalty be less than 5 percent of the quantity or gross value of the output of sulphur at the point of shipment to market.

(ii) *Solid (hardrock) minerals*. The terms and conditions of the lease, including the royalty rates, will be established on an individual case basis. If minerals other than that specified in the issued lease should be discovered and mined by the lessee, an applicable royalty rate will be established by the lessor for such mineral.

(b) *Minimum royalty*. (1) The District Mining Supervisor shall have discretion, upon the request of the lessee, to authorize the advance payment of a minimum royalty in lieu of continued operation for any particular year.

(2) Potassium, Sodium, and Sulphur. Leases will require, beginning with the 6th full calendar year of the lease

term, a minimum annual production or the payment of a minimum royalty of $2 per acre per year, as adjusted in accordance with paragraph (b)(6) of this section, unless (i) lease production is interrupted by strikes, the elements, or casualties not attributable to the lessee, or (ii) lease operations are suspended upon a satisfactory showing that market conditions are such that the lease cannot be operated except at a loss, or (iii) lease operations are suspended by the Secretary for the reasons specified in section 39 of the Mineral Leasing Act (30 U.S.C. 209).

(3) Phosphate. Leases will require, beginning with the 4th year of the lease, a minimum annual production or the payment of a minimum royalty of $2 per acre per year, as adjusted in accordance with paragraph (b)(6) of this section, unless (i) lease production is interrupted by strikes, the elements, or casualties not attributable to the lessee, or (ii) lease operations are suspended upon a satisfactory showing that market conditions are such that the lease cannot be operated except at a loss, or (iii) lease operations are suspended by the Secretary for the reasons specified in section 39 of the Mineral Leasing Act (30 U.S.C. 209).

(4) Provided the lessee has established minimum production as specified by the terms of the lease, the lessee may petition the District Mining Supervisor to reduce the amount of minimum production specified in the lease upon the basis of a showing by the lessee.

The petition shall include, among other relevant information (i) the operator's estimate of the tonnage of leased minerals in the leased land; (ii) all available information as to the grade thereof; (iii) the plan of operations for the leased property and any adjoining property to be worked with it; (iv) a general statement of the method used in mining and processing the leased minerals; (v) the estimated rate of extraction; and (vi) possible absorption in the markets. Within 6 months after receiving this information, the District Mining Supervisor shall determine whether the minimum production requirement in the lease should be reduced or not. In making that determination, the District Mining Supervisor shall consider what would be a reasonable time period needed to mine the leased deposits in view of their location and the lessee's operations on adjacent lands.

(5) Any potassium, sodium, phosphate or sulphur lease renewal or readjustment after the effective date of these regulations shall require a minimum production or a minimum royalty of $2 per acre per year, as adjusted in accordance with paragraph (b)(6) of this section, beginning with the next anniversary date after renewal or readjustment.

(6) Minimum royalties due in lieu of production shall be adjusted annually in accordance with the Producer Prices and Prices Indexes (Department of Labor, Bureau of Labor Statistics). Leases issued prior to publication of these regulations shall not be affected until the next lease readjustment or renewal.

(c) *Limitation of overriding royalties.* (1) An overriding royalty interest may be created by assignment or otherwise: *Provided, however,* That if the total of the overriding royalty interest at any time exceeds one percent of the gross value of the output at the point of shipment to market, it shall be subject to reduction or suspension by the Secretary to a total of not less than one percent of such gross value, whenever, in the interest of conservation, it appears necessary to do so in order (i) to prevent premature abandonment, or (ii) to make possible the economic mining of marginal or low grade deposits. Where there is more than one overriding royalty interest, any such suspension or reduction shall be applied to the respective interests in the manner agreed upon by the holders thereof or in the absence of such agreement, in the inverse order of the dates of creation of such interests.

(2) Any assignment, sublease, or other transfer or agreement which creates an overriding royalty interest, will not be approved unless the owner of that interest files his agreement in writing that such interest is subject to suspension or reduction as provided in paragraph (c)(1) of this section. No overriding royalties shall be paid at a rate in excess of the rate to which

they have been so reduced until otherwise authorized by the Secretary.

(3) *Exceptions—Phosphate.* An overriding royalty interest shall not be created by assignment or otherwise exceeding one percent of the gross value of the output at point of shipment to market or an overriding royalty interest which when added to any other overriding royalty interest exceeds that percentage, excepting that where an interest in the leasehold, permit, or operating agreement is assigned, the assignor may retain an overriding royalty interest in excess of the above limitation if he shows to the satisfaction of the authorized officer that he has made substantial investments for improvements on the land covered by the assignment.

(d) *Waiver, suspension, or reduction of rental or minimum royalty.* (1) In order to encourage the greatest ultimate recovery of phosphate, potassium, sodium, and sulphur, and in the interest of conservation, the Secretary of the Interior whenever he determines it necessary to promote development or finds that the leases cannot be successfully operated under the terms provided therein may waive, suspend, or reduce the rental or minimum royalty or reduce the royalty on an entire leasehold, or on any deposit, tract, or portion thereof segregated for royalty purposes.

(2) An application for any of the above benefits shall be filed in triplicate in the office of the mining supervisor for phosphate, potassium, sodium, and sulphur leases. It must contain the serial number of the leases, the land office name, the name of the record title holder and operator or sublessee and the description of the lands by legal subdivision.

(i) Each application involving phosphate, potassium, sodium and sulphur shall show the number and location of each mine, a map showing the extent of the mining operations, a tabulated statement of the minerals mined and subject to royalty for each month covering a period of not less than 12 months next prior to the date of filing of the application, and the average production per day mined for each month and complete information as to why the minimum production was not attained.

(ii) Every application must contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of any leased products, and all facts tending to show whether the mines can be successfully operated upon the royalty or rental fixed in the lease. Where the application is for a reduction in royalty full information shall be furnished as to whether royalties or payments out of production are paid to others than the United States, the amounts so paid and efforts made to reduce them.

(iii) The applicant must also file agreements of the holders of the lease and of the royalty holders to a permanent reduction of all other royalties from the leasehold to aggregate not in excess of one-half the Government royalties.

(e) *Suspension of operations and production.* (1) Applications by lessees for relief from the producing requirements or from all operating and producing requirements of mineral leases shall be filed in triplicate in the office of the Regional Mining Supervisor for all leases. By Departmental Order No. 2699 and Geological Survey Order No. 218 of August 11, 1952, the Regional Mining Supervisor is authorized to act on applications for suspension of operations or production or both filed pursuant to this section and to terminate suspensions of this kind which have been or may be granted.

(2) The term of any lease will be extended by adding thereto any period of suspension of all operations and production during such term pursuant to any direction or assent of the Secretary.

(3) A suspension shall take effect as of the time specified in the direction or assent of the Secretary. Rental and minimum royalty payments will be suspended during any period of suspension of all operations and production directed or assented to by the Secretary, beginning with the first day of the lease month on which the suspension of operations and production becomes effective or, if the suspension of operations and production becomes effective on any date other than the first day of a lease month, beginning

with the first day of the lease month following such effective date. The suspension of rental and minimum royalty payments shall end on the first day of the lease month in which operations or production is resumed. Where rentals are creditable against royalties and have been paid in advance, proper credit will be allowed on the next rental or royalty due under the lease.

(4) No lease shall be deemed to expire by reason of a suspension of either operations or production only, pursuant to any direction or assent of the Secretary.

(5) The minimum annual production requirements of a lease issued under the act for phosphate, potassium, sodium, or sulphur shall be proportionately reduced for that portion of a lease year for which suspension of operations and production is directed or granted by the Secretary of the Interior in the interest of conservation.

(6) *Exceptions*—(i) *Solid (hardrock) minerals.* (*a*) Upon a showing of the need and upon application therefor, filed in triplicate in the office of the Regional Mining Supervisor and a copy filed in the proper land office, the lessee may be granted a suspension of the operating and/or producing requirements of the lease. A rental in lieu of royalty of not less than $1 per acre shall be paid annually during the period of suspension. The period of suspension shall be specified in an appropriate order of the Secretary or his authorized representative.

(*b*) Notwithstanding the provisions of the preceding paragraph, the Secretary, in the interest of conservation of natural resources, may suspend all operating and producing requirements and waive, suspend, or reduce the rental or minimum royalty.

[35 FR 9706, June 13, 1970, as amended at 44 FR 42650, July 19, 1979; 45 FR 36035, May 28, 1980]

Subpart 3504—Bonds

SOURCE: 35 FR 9708, June 13, 1970, unless otherwise noted.

§ 3504.1 General.

§ 3504.1-1 Statement.

Bonds shall be either corporate surety bonds or personal bonds except that bonds with individual sureties as provided in § 3504.3 may be furnished for the protection of the entryman or owner of surface rights.

§ 3504.1-2 Special acts.

(a) *Gold and silver in confirmed private land grants.* A bond with approved corporate surety in the sum of $2,000 will be required as a guarantee to the making of the investment fixed in the lease and compliance with the other terms and conditions thereof, but a larger bond may be fixed if that amount is determined to be inadequate for the purpose for which given.

(b) *Asphalt in Oklahoma.* A compliance bond in no event less than $1,000 will be required prior to issuance of the lease and compliance with § 3504.2-1(b).

(c) *Nevada*—(1) *Silica sands and other nonmetallic minerals in certain areas in Nevada.* The applicant will be required prior to the issuance of the lease to furnish and maintain thereafter a bond with acceptable corporate surety, or two qualified individual sureties, in the sum of $1,000 or such other amount as may be fixed, conditioned against failure of the lessee to comply with the provisions of the lease.

(2) *Sand and gravel in certain lands patented to the State.* The applicant will be required prior to issuance of the lease to furnish and maintain thereafter a bond with acceptable corporate surety, or two qualified individual sureties, in the sum of $1,000 or such other amount as may be fixed, conditioned against failure of the lessee to comply with the provisions of the lease, and for the protection of the owner of the surface estate from damages resulting from the operation of such lessee.

(d) *Reserved minerals in lands patented to the State of California for park or other public purposes.* Each lessee will be required to furnish a bond in such sum as may be determined adequate, in no case less than $1,000, to insure compliance with the terms of the lease and for the protection of the surface owner.

(e) *Certain national forest lands in Minnesota.* There must be filed a bond in compliance with § 3504.2-1(a)(1) for permits; and § 3504.2-1(b) for leases.

(f) *Lease for minerals on lands withdrawn for reclamation purposes within Lake Mead Recreation area.* There must be filed a bond in compliance with § 3504.2-1(b) for leases.

(g) *Prospecting and mineral leasing within National Forest Wilderness.* There must be filed a bond in compliance with § 3504.2-1(a)(1) for permits; and § 3504.2-1(b) for leases.

(h) *Development of minerals in lands within Whiskeytown-Shasta-Trinity national recreation area.* There must be filed a bond in compliance with § 3504.2-1(a)(1) for permits; and § 3504.2-1(b) for leases.

§ 3504.2 Type of bond.

§ 3504.2-1 Compliance bonds.

(a) *Permit bond*—(1) *Amount.* The applicant must furnish a bond conditioned upon compliance with all terms of the prospecting permit on all permits issued pursuant to applications filed under this section. The bond shall be in the amount determined by the authorized officer, but not for less than $1,000.

(2) *Exception*—(i) *Solid (Hardrock) minerals.* The permittee may also be required, as condition precedent to the issuance of a permit, to furnish a permit bond.

(b) *Lease bond*—(1) *Amount.* A bond conditioned upon compliance with all the provisions of the lease must be furnished on all leases issued. The bond shall be in the amount determined by the authorized officer but in no event less than $5,000 for potassium, sodium, phosphate and sulphur leases; and not less than $500 for solid (hardrock) mineral leases. The right is reserved to increase the amount of the bond when deemed proper by the authorized officer.

[35 FR 9708, June 13, 1970, as amended at 44 FR 42650, July 19, 1979]

§ 3504.2-2 Where filed and copies.

Bonds must be filed in the proper office in a single original copy.

§ 3504.2-3 When filed.

Permit bonds may be filed with an application which will expedite action thereon; or bonds may be filed within 30 days after receipt of notice by the applicant of the bond requirement.

§ 3504.2-4 Form of bond.

Bonds will be furnished on a form approved by the Director.

§ 3504.2-5 Termination of period of liability.

The period of liability of any bond will not be terminated until all terms and conditions in the permit or lease have been fulfilled.

§ 3504.3 Individual sureties.

§ 3504.3-1 Net worth statement.

Each surety must execute a statement showing that he is worth in real property not exempt from execution, double the sum specified in the undertaking, over and above his just debts and liabilities and that he is either a resident of the same State and the U.S. Judicial District as the principal on the bond, or of the State and the Judicial District in which the lands involved are located.

§ 3504.3-2 Certificate required.

There also must be furnished a certificate by a judge or clerk of a court of record, a U.S. Attorney, a U.S. Commissioner, or a U.S. Postmaster, as to the identity, signature, and financial competency of the sureties.

§ 3504.3-3 Requirements.

All bonds furnished with individual sureties will be examined every 2 years, or at any other time when found advisable, and the principal on the bond will be required to furnish new statements of justification by the sureties and a new certificate of financial competency, and if such sureties are unable to qualify additional security will be required.

§ 3504.3-4 Terms.

Where surety bonds are tendered with individuals as sureties they must be executed by not less than two qualified individual sureties to cover compliance with all terms and conditions of the lease or permit or the applicable law or regulations.

§ 3504.3-5 Forms.

The statement of justification required to be furnished by the sureties, and the certificate of competency should be on a form approved by the Director.

§ 3504.4 Corporate bond or personal bond.

§ 3504.4-1 Amount.

To be determined by the authorized officer after consultation with the Mining Supervisor.

(a) Compliance with § 3504.2-1(a)(1) for permits.

(b) Compliance with § 3504.2-1(b) for leases.

(1) *Corporate surety bond.* (i) A corporate surety bond may be filed for a prospecting permit or lease.

(2) *Personal bond*—(i) *Type of bond.* In lieu of a corporate surety bond, a personal prospecting permit or lease bond may be filed.

(ii) *Deposit of securities.* Personal prospecting permit or lease bonds secured by negotiable U.S. bonds of a par value equal to the amount of the required surety bond, together with a power of attorney may be executed on a form approved by the Director.

§ 3504.4-2 Qualified sureties.

(a) *Treasury lists.* A list of companies holding certificates of authority from the Secretary of the Treasury under the Act of Congress, approved July 30, 1947 (6 U.S.C. 6-13) as acceptable sureties on Federal bonds is published in the FEDERAL REGISTER annually.

§ 3504.5 Nationwide bond.

§ 3504.5-1 Amount.

Lessee may furnish for potassium, sodium, or phosphate a separate bond in the amount of $75,000 for full nationwide coverage of all leases and permits issued for the respective mineral pursuant to the Mineral Leasing Acts, and also pursuant to the Mineral Leasing Act for Acquired Lands (30 U.S.C. sec. 351-359).

[35 FR 9708, June 13, 1970, as amended at 44 FR 42650, July 19, 1979; 45 FR 56340, Oct. 1, 1979]

§ 3504.6 Statewide bond.

§ 3504.6-1 Amount.

Lessee may furnish for potassium, sodium, or phosphate for each state in which the lessee holds leases or permits separate statewide bond of not less than $25,000 which shall cover all leases and permits issued under this part in that State for the respective mineral.

[35 FR 9708, June 13, 1970, as amended at 44 FR 42650, July 19, 1979; 44 FR 56340, Oct. 1, 1979]

§ 3504.7 Collective bond.

§ 3504.7-1 Amount.

Lessee may furnish for potassium, sodium, or phosphate a collective bond in an amount not less than the total minimum coverage required if separate bonds on each lease were furnished.

[35 FR 9708, June 13, 1970, as amended at 44 FR 42650, July 19, 1979; 44 FR 56340, Oct. 1, 1979]

§ 3504.8 Default.

§ 3504.8-1 Payment of surety.

Where upon a default, the surety makes payment to the Government of any indebtedness due under a lease, the face amount of the surety bond and the surety's liability thereunder shall be reduced by the amount of such payment.

§ 3504.8-2 Penalty.

Thereafter upon penalty of cancellation of all of the leases covered by such bond that principal shall post a new nationwide bond in the amount of $75,000, a new statewide bond in the amount of $25,000 or a new collective bond as the case may be, within 6 months after notice, or within such shorter period as the authorized officer of the Bureau of Land Management may fix.

§ 3504.8-3 Relief.

However, in lieu thereof, the principal may within that time file separate bonds for each lease.

§ 3504.8-4 Applicability of provisions to existing bonds.

The provisions hereof may be made applicable to any nationwide, statewide or collective bond in force at the time of the approval of the amendment of this paragraph by filing in the proper office a written consent to that effect and an agreement to be bound by the provisions hereof executed by the principal and the surety. Upon receipt thereof the bond will be deemed to be subject to the provisions of this paragraph.

§ 3504.9 Exploration bond.

§ 3504.9-1 See 43 CFR Part 23.

Subpart 3505—Cooperative Conservation Provisions

SOURCE: 35 FR 9709, June 13, 1970, unless otherwise noted.

§ 3505.1 General.

§ 3505.1-1 [Reserved]

§ 3505.1-2 Solid (hardrock) minerals.

The Secretary of the Interior or his authorized representative may approve operating or development contracts or processing or milling arrangements for the conservation of natural products or whenever in his discretion, the public convenience or necessity may require it or the interests of the United States may be best served thereby.

§ 3505.2 [Reserved]

§ 3505.3 Solid (hardrock) minerals.

§ 3505.3-1 Types of contracts.

(a) *Operating or development contract.* The Secretary of the Interior or his authorized representative may approve operating or development contracts, or processing or milling arrangements, made by one or more lessees with one or more persons, associations, or corporations, to justify operations on a large scale for the discovery, development, production or transportation of ores.

§ 3505.3-2 Application.

(a) *Where filed and copies.* An application must be filed in the proper office in three executed copies, and a duplicate original must be filed with the Regional Mining Supervisor of the Geological Survey. All of the contracts held by the same contractor, in the area, should be submitted at the same time and full disclosure of the project made.

(b) *Showing required.* The contract must be accompanied by a statement showing all of the interests held by the contractor designated in the contract in the area, and also the agreed or the proposed plan of operation or development of the leased lands.

§ 3505.3-3 Approval.

(a) *Approval of contract.* Contracts may, by and with concurrence of the Geological Survey and on such conditions as may be subscribed, be approved by the Secretary or his authorized representative.

(b) *Exemption from acreage limitations.* Operating or development contracts may be approved regardless of acreage limitations provided in § 3501.2-5.

Subpart 3506—Assignments or Transfers and Subleases

SOURCE: 35 FR 9710, June 13, 1970, unless otherwise noted.

§ 3506.1 Qualifications.

§ 3506.1-1 Who may file.

Permits and leases may be transferred in whole or in part to any person, association, or corporation qualified to hold such leases and permits.

(a) *Minors.* A minor is not qualified to hold a permit or lease and a transfer to a minor will not be approved.

(1) *Exception.* An assignment in behalf of a minor heir or devisee of a

permittee or lessee to his legal guardian or trustee may be approved.

§ 3506.1-2 Failure to qualify.

No transfer will be approved if the transferee is not qualified to take and hold a permit or lease or if his bond is insufficient.

§ 3506.1-3 Number of copies required.

A single executed copy of qualifications is sufficient.

§ 3506.1-4 Sole party in interest.

Compliance with § 3502.7.

§ 3506.1-5 Attorney-in-fact.

Compliance with § 3502.6.

§ 3506.1-6 Heirs and devisees.

In order for the heirs or devisees of a deceased holder of a permit or lease, an operating agreement, or a royalty interest in a permit or lease, to be recognized by the Secretary as the holder of the permit or lease, agreement or interest, there must be furnished the appropriate showing required under § 3502.8.

§ 3506.2 Requirements.

§ 3506.2-1 Where filed.

An application for approval of an assignment or transfer must be filed in the proper office as specified in § 3000.5-1.

§ 3506.2-2 Forms and statements.

(a) *Record title; copies required.* Assignments or transfers of record title interest must be filed in triplicate.

(1) *Approved form.* There is no specific form which must be used for assignment transfers or requests for approval thereof. The application must contain evidence of qualifications of the assignee or transferee consisting of the same showing required of a lease or permit applicant as set forth in qualifications Subpart 3502.

(2) *Separate instruments required.* A separate instrument of assignment or transfer must be filed for each permit or lease when transfers involve record titles. When transfers to the same person, association, or corporation, involving more than one permit or lease are filed at the same time for approval, one request for approval and one showing as to the qualifications of the assignee or transferee will be sufficient.

(b) *Other than record; title; copies required.* A single executed copy of all other instruments of transfer is sufficient.

§ 3506.2-3 Bonds.

(a) *Coverage.* If a bond is necessary it must be furnished before a transfer of a permit or lease will be approved, the consent of the surety to the substitution of the transferee as principal, or a new bond with the transferee as principal, must be submitted if the original permit or lease required the maintenance of a bond. If the transfer is for part of the land only, it must be for a legal subdivision and (1) the consent of the surety to the transfer and its agreement to remain bound as to the interest retained by the permittee or lessee must be submitted, as well as (2) a new bond with the transferee as principal covering the portion of the lands transferred.

(b) *Continuing responsibility.* The transferor of a permit or lease, including a sublease, and his surety will continue to be responsible for the performance of any obligation under the permit or lease until the effective date of the approval of the transfer. If the transfer is not approved, their obligation to the United States shall continue as though no such transfer had been filed for approval. After the effective date of approval the transferee, including sublessee, and his surety will be responsible for the performance of all permit or lease obligations notwithstanding any terms in the transfer to the contrary. The account under the permit or lease must be in good standing before approval of a transfer will be given.

§ 3506.2-4 Permit or lease account status.

The account under the permit or lease must be in good standing before approval of a transfer will be given.

§ 3506.2-5 Description of lands.

Each instrument of transfer must describe the lands involved in the same manner as described in the permit or lease or in the manner required by § 3501.1-3.

(a) *Effect of assignments.* The approval of transfer of only a part of the lands described in a permit or lease will create a new permit or lease which will be given a current serial number, but a discovery on lands under one permit will not inure to the benefit of the other.

§ 3506.3 Approval.

§ 3506.3-1 Application.

Transfers of permits and leases, whether by direct assignments, working agreements, transfer of royalty interests, subleases or otherwise, must be filed for approval within 30 days from final execution and must contain evidence of the qualifications of the assignee or transferee, consisting of the same showing required of a lease or permit applicant by Subpart 3502.

§ 3506.3-2 Effective date.

A transfer will take effect the first day of the month following its final approval by the Bureau of Land Management, or if the transferee requests, the first day of the month of the approval.

§ 3506.4 Royalty interests.

Transfer of royalty interests must be filed within 90 days from final execution and must contain evidence of the qualifications of the assignee or transferee, consisting of the same showing required of a lease or permit applicant by Subpart 3502.

§ 3506.5 Extensions.

The approval of such a transfer will not extend the life of the permit or the readjustment periods of the lease.

Subpart 3509—Surface Management

§ 3509 Surface management.

§ 3509.1 See 43 CFR Part 23.

PART 3510—PROSPECTING PERMITS

Subpart 3510—Prospecting Permits, General

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Subpart 3510—Prospecting Permits; General

SOURCE: 35 FR 9711, June 13, 1970, unless otherwise noted.

§ 3510.0-3 Authorities.

(a) *Public domain and acquired lands.* The Secretary is authorized to issue permits to prospect unclaimed and undeveloped land areas subject to the provisions of the Mineral Leasing Act, as amended and supplemented, and the Mineral Leasing Act for Acquired Lands as set forth in § 3500.0-3. The Secretary is further authorized to issue permits for chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium and sodium.

§ 3510.1 General.

§ 3510.1-1 Character of lands.

The Secretary of the Interior is authorized to issue permits to qualified applicants to prospect unclaimed and undeveloped areas of mineral lands and mineral deposits in public and acquired lands or in public and acquired lands disposed of with a reservation of deposits to the United States.

(a) *Exceptions.* (1) *Sulphur.* The Secretary of the Interior is authorized to issue permits to prospect for sulphur in public lands or in public lands disposed of with a reservation of such deposits to the United States in the States of Louisiana and New Mexico.

§ 3510.1-2 Rights conferred.

A permit will grant the permittee the exclusive right to prospect on and explore the lands involved to determine the existence of, or workability of, and commercial value of the mineral deposits therein. Only such material may be removed from the lands as is necessary for experimental work or the demonstration of the existence of such deposits in commercial quantities.

Subpart 3511—Prospecting Permits

SOURCE: 35 FR 9711, June 13, 1970, unless otherwise noted.

§ 3511.1 Terms.

§ 3511.1-1 Duration of permits.

Prospecting permits are issued for a term of 2 years.

§ 3511.1-2 Dating of permits.

The permit will be dated as of the first day of the month after its issuance unless the applicant requests that it be dated the first day of the month of issuance.

§ 3511.1-3 Acreage limitations.

(a) For public domain, compliance with § 3501.1-4(b).

(b) For acquired lands, compliance with § 3501.1-4(b) is required.

(c) For solid (hardrock) minerals, compliance with § 3501.2-5(b) is required.

§ 3511.1-4 Withdrawal of application.

An application for permit may be withdrawn in whole or in part prior to its execution on behalf of the United States. The filing fee will be retained as service charge. The advance rental covering the acreage withdrawn will be refunded.

§ 3511.1-5 Amendment to the application.

An amendment to an application for prospecting permit to include additional lands receives priority for such additional lands from the date of filing of the amended application. The amended application must be accompanied by the additional rental required.

§ 3511.1-6 Determination of priorities.

(a) *Regular filings.* Priority of applications will be determined in accordance with time of filing.

(b) *Simultaneous filings.* Where applications or offers received by mail or filed over the counter at the same time are in conflict, the right of priority of filing will be determined by public drawing. All applications filed in the manner specified in § 1821.2-3 of this chapter, will be deemed simultaneously filed.

§ 3511.1-7 Land description.

Compliance with §§ 3501.1-3 and 3501.2-4 is required.

§ 3511.2 Application.

§ 3511.2-1 Forms.

(a) *Application for permit; issuance of permit.* To obtain a prospecting permit, an application must be filed on a form approved by the Director or an exact reproduction thereof. Each application should be filled in on a typewriter or printed plainly in ink by the applicant or the applicant's duly authorized attorney in fact.

(b) *Exceptions*—(1) [Reserved]

(2) *Acquired lands—additional showing required.* Specify the dominant mineral or minerals for which the lease or permit is sought;

(c) *Where filed and copies.* Applications must be filed in the proper office and filed in quintuplicate.

(1) *Exceptions*—(i) *Acquired and solid (hardrock) minerals.* Seven copies of the application must be filed.

[35 FR 9711, June 13, 1970, as amended at 42 FR 25470, May 17, 1977]

§ 3511.2-2 [Reserved]

§ 3511.2-3 Approval.

(a) The United States will indicate its acceptance of the application, in whole or in part, and the issuance of the permit by the signature of the authorized officer in the space provided therefor. An executed copy of the permit will be mailed to the applicant at the address of record.

(b) An application for permit on a form not correctly reproduced, but which contains the statement that the applicant agrees to be bound by the terms and conditions of the form in effect at the date of filing, will be approved by the authorized officer provided all other requirements are met.

§ 3511.2-4 Rejection.

(a) Except as provided in § 3511.2-3 an application will be rejected if:

(1) The land description does not conform with the requirements of § 3501.1-3, or the land is not in reasonably compact form as specified in § 3501.1-3.

(2) The total acreage exceeds the allowable acreage specified in § 3501.1-4(b) except where the rule of approximation applies (see § 3500.0-5(c)).

(3) The full amount of the filing fee and the first year's rental do not accompany the application, the rental payment to be for the total acreage if known, and if not known, for the total acreage computed on the basis of 40 acres for each smallest legal subdivision.

(4) The application is signed by an attorney-in-fact on behalf of the applicant and is not accompanied by the evidence and statement required by § 3502.6-1.

(5) The application is signed by a guardian or trustee on behalf of a minor and is not accompanied by the evidence specified § 3502.5.

(6) Less than five copies of the application are filed.

(7) There is noncompliance with the requirements specified in Subpart 3502.

(b) Curable defects. If an application is defective to the extent set out in paragraph § 3511.2-4(a) of this section, the applicant will be given an opportunity to file a new application within 30 days from service of the rejection, and the fee and rental payments on the old application will be applied to the new application if the new application shows the serial number of the old application. The advance rental will be returned unless within the 30-day period another application is filed.

§ 3511.3 Extensions.

§ 3511.3-1 Terms.

(a) *Duration.* Permits may be extended by an authorized officer of the Bureau of Land Management for a period of 2 years. (1) *Exceptions*—(i) *Sodium and sulphur.* No extension of term will be granted.

(ii) *Phosphate.* Phosphate permits may be extended by an authorized officer of the Bureau of Land Management for an additional period not in excess of 4 years.

(b) *Requirements.* A permit may be extended, in the discretion of the Secretary and after consultation with the Mining Supervisor of the Geological Survey, if:

(1) The permittee has been unable with reasonable diligence to determine the existence or workability of the deposits covered by the permit and desires to prosecute further prospecting or exploration, or for other reasons warranting such extension.

(2) The permittee has drilled at least one adequate test well on the permit area or performed other comparable prospecting prescribed in the permit. This requirement may be waived upon a satisfactory showing that the failure of permittee was directly attributable to the shortage of equipment or labor essential to the prescribed prospecting.

(3) The permittee's failure to perform diligent prospecting activities was due to conditions beyond his control.

§ 3511.3-2 Application.

(a) *Where and when filed; and copies.* Application for extension must be filed in quintuplicate in the proper office within 90 days prior to expiration of the permit.

(b) *Showing required.* The application for extension:

(1) Must disclose the reasons additional time is considered necessary to complete prospecting work.

(2) Should consist of copies of timely correspondence or other evidence demonstrating the unsuccessful efforts to obtain the material or labor.

(3) Should state why the permittee's failure to perform diligent prospecting activities was due to conditions beyond his control.

(4) Must show how much additional time is necessary to complete prospecting work.

§ 3511.3-3 Approval.

Extension will be limited to such period, not to exceed the 2 years, as may be determined to be allowable under the circumstances in each particular case.

§ 3511.3-4 Rejection.

(a) *Failure to perform.* Failure of the permittee to perform prospecting or exploration work as required without adequate justification.

(b) *Failure to file.* If an application for extension is not filed within the specified period, the permit will expire without notice to the permittee and the lands if otherwise available shall be subject to filing of new applications for permits.

§ 3511.4 Terminations, expirations, and cancellations.

§ 3511.4-1 Relinquishments.

The permittee may surrender the entire prospecting permit or any legal subdivision thereof. If the lands are not described by legal subdivisions, a partial relinquishment must describe definitely the lands surrendered and give the exact area thereof.

(a) *Where filed and copies.* A relinquishment must be filed in the proper office and filed in triplicate.

(b) *Acceptance.* Upon its acceptance, it will be effective as of the date it is filed, subject to the continued obligation of the permittee and his surety to make payment of all accrued rentals and royalties, and to provide for the preservation of any mines or productive works or permanent improvements on the permit lands in accordance with the regulations and terms of the permit.

§ 3511.4-2 Operation of law.

(a) *Expiration.* If an application for extension is not filed within the specified period, the permit will expire without notice to the permittee and the lands if otherwise available shall be subject to filing of new applications for prospecting permits.

(1) *Exceptions*—(i) *Sodium and sulphur.* Unless a lease application is filed pursuant to Subpart 3520 the permit will expire at the end of its period without notice to permittee.

(ii) *Solid (hardrock) minerals.* Upon failure of the permittee to file an application for extension within the specified period, the permit will expire 30 days after the end of its primary term without notice to the permittee and the lands will thereupon become subject to new application for prospecting permits.

(b) *Terminations and expirations for nonpayment of rental.* (1) Any prospecting permit shall terminate automatically if the permittee fails to pay the rental on or before the anniversary date of the permit. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely.

(2) The termination of the permit for failure to pay the rental must be noted on the official records of the proper land office. Until such notation is made, the lands covered by the permit shall not be available for filing of any other permit applications. Applications for such permits filed prior to such notation will be rejected.

(3) Where lands embraced in a canceled or relinquished permit are not withdrawn from leasing, such lands shall become available for the filing of new permit applications immediately upon notation on the official status re-

cords of the cancellation or relinquishment of the permit. Even if the cancellation or relinquishment has not been noted, the lands formerly covered by the permit shall likewise become available for the filing of new applications on the date which would have marked the end of the primary or extended term of the permit except for the cancellation or relinquishment.

§ 3511.4-3 **Default.**

(a) *Noncompliance with terms of permit.* Except as provided for in § 3511.4-2(b)(1), if a permittee fails to comply with the general regulations in force at the date of the permit, or defaults with respect to any of the terms or stipulations of the permit, and such failure or default continues for 30 days after service of written notice thereof by the Government, the permit may be canceled. A waiver of any particular cause for cancellation shall not prevent the cancellation of the permit for any other cause, or for the same cause occurring at any other time. .

PART 3520—PREFERENCE RIGHT AND COMPETITIVE LEASES

Subpart 3520—Preference Right and Competitive Leases, General

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Subpart 3520—Preference Right and Competitive Leases; General

SOURCE: 35 FR 9713, June 13, 1970, unless otherwise noted.

§ 3520.0-3 **Authorities.**

(a) *Public domain and acquired lands.* The Secretary is authorized to divide into leasing units and award leases of mineral lands and mineral deposits owned by the United States as set forth in § 3500.1-1 subject to the provisions of the Mineral Leasing Act, as amended and supplemented, and the Mineral Leasing Act for Acquired Lands as set forth in § 3500.0-3. Coal leasing is governed by the application procedures in 43 CFR Group 3400. Other leaseable minerals are covered by the procedures in 43 CFR Subpart 3521.

[42 FR 25470, May 17, 1977, as amended at 44 FR 42650, July 19, 1979]

§ 3520.1 General.

§ 3520.1-1 Preference right leases.

(a) *Phosphate, sodium, sulphur, and potassium.* (1) The authorized officer shall issue a lease to the holder of a prospecting permit issued for phosphate, sodium, sulphur, or potassium if the permittee shows to the authorized officer that, within the term of the permit, he discovered a valuable deposit of the mineral for which the permit was issued.

(2) If the permit is for sodium, sulphur, or potassium, the authorized officer may not issue a lease unless the permittee also shows that the land is chiefly valuable for the development of the mineral deposit discovered.

(b) *Lease area.* The lease shall be for all or part of the lands in a reasonably compact form.

(c) *Standards to determine "valuable deposit."* A permittee has discovered or a valuable deposit of one of the other permit minerals if the mineral deposit discovered under the permit is of such a character and quantity that a prudent person would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. The permittee must present sufficient evidence to show that there is a reasonable expectation that his revenues from the sale of the mineral will exceed his costs of developing the mine, and extracting, removing, and marketing the mineral.

(d) *Applicability.* The standard in paragraph (c) of this section shall apply to all future applications for leases by prospecting permittees, and to applications pending on the effective date of this regulation. Leases which have been issued prior to that date may not be reexamined to determine whether they meet the standards in paragraph (c) of this section.

(30 U.S.C. 189)

[41 FR 18847, May 7, 1976, as amended at 44 FR 42650, July 19, 1979]

§ 3520.2 Terms.

§ 3520.2-1 Duration of leases.

Leases shall be issued for indeterminate periods subject to readjustment or renewal at the end of the first 20-year period upon such terms and conditions as may be incorporated in each lease or prescribed in general regulations issued by the Secretary of the Interior, including covenants relative to mining methods, waste, period of preliminary development and minimum production.

(a) *Exceptions*—(1) *Asphalt.* Asphalt leases are issued for 10 years and so long thereafter as the lessee complies with the terms and conditions of the lease.

(2) *Solid (hardrock) minerals.* The lease will be issued for a period not exceeding 20 years the term to be determined upon the advice of the agency having jurisdiction over the surface and the U.S. Geological Survey.

[42 FR 25470, May 17, 1977, as amended at 44 FR 42650, July 19, 1979]

§ 3520.2-2 Dating of leases.

(a) Leases will be dated the first day of the month following the date signed by the lessor, except that upon receipt of a prior written request, a lease may be dated the first day of the month in which it is signed.

(b) *Competitive leases.* The lease will be dated as of the first day of the month following its issuance unless the successful bidder requests that it be dated as of the first day of the month of issuance.

[35 FR 9713, June 13, 1970, as amended at 41 FR 36022, Aug. 26, 1976]

§ 3520.2-3 Acreage limitations.

(a) *Consolidation of prospecting permits into preference right leases after discovery.* After discovery, prospecting permits may be consolidated into preference right leases not to exceed the allowable acreage as set forth in § 3501.1-4(b) if, after consultation with the Mining Supervisor, it is determined to be justified and the interests of the United States are protected.

(b) *Consolidation of competitive leases.* Competitive leases may be consolidated not to exceed the allowable acreage as set forth in § 3501.1-4(b) if, after consultation with the mining supervisor of the Geological Survey, if it is justifiable and the interests of the United States are protected.

(c) *Size of competitive lease.* (1) Compliance with § 3501.1-4(b) is required.

(2) Preference right leases; acquired lands. Should the issuance of the preference right lease, for the acreage applied for, increase the permittee's leased acreage beyond 10,240 acres, such preference right lease will not issue unless the permittee, within the time allowed by the signing officer, relinquishes sufficient of his leased lands to reduce the area of his leaseholds, including the area to be included in the preference right lease, to 10,240 acres except as provided for in § 3501.2-5.

§ 3520.2-1 Land description.

(a) Compliance with § 3501.1-3 is required.

Subpart 3521—Designation of Lands for Lease and Offer of Lands for Lease

SOURCE: 35 FR 9714, June 13, 1970, unless otherwise noted.

§ 3521.1 Preference right lease application.

§ 3521.1-1 Forms.

(a) (1) An application for a lease by a prospecting permittee shall be filed within 30 days after the permit expires.

(2) If a permittee needs additional time to submit the information required by § 3521.1-1(b) of this part and files, within 30 days after the permit expires or within 180 days from the effective date of these regulations, whichever is later, a notice of application and request for extension of time, the authorized officer shall extend the time for submitting the required information for the period requested, but for not more than one year.

(b) *Initial showing.* The initial application for a lease shall contain the following information:

(1) The quantity and quality of the minerals discovered within the area included within the permit. The term "quantity of minerals" means only measured and indicated reserves. Structural maps of the tops of all beds to be mined; isopachous maps of beds to be mined and interburden; and isopachous maps of overburden (for beds to be mined by surface methods). These maps shall show the location of test holes and outcrops. Estimates of measured and indicated reserves for each bed to be mined must also be submitted. Data submittals shall include, at a minimum, average grade of the ore. In addition, all supporting geological and geophysical data used in development of the above required information shall be submitted.

(2) A map, or maps, as may be available from State or Federal sources, which shows the topography of the land applied for, on which the applicant shall show physical features and natural drainage patterns and existing roads, vehicular trails, and utility systems; the location of any proposed development or mining operations and facilities incidental thereto, including the appropriate locations and areal extent of the areas to be used for pits, overburden, and tailings; and the location of water sources or other resources which may be used in the proposed operations or facilities incidental thereto.

(3) A narrative statement, including:

(i) The anticipated scope, method, and schedule of development operations, including the types of equipment to be used;

(ii) The method of mining anticipated, including the best available estimate of the mining sequence and production rate to be followed;

(iii) The relationship, if any, between the mining operations anticipated on the lands applied for and existing or planned mining operations, or facilities incidental thereto, on adjacent Federal or non-Federal lands;

(iv) A brief description, including suitable maps or aerial photographs as appropriate, of the existing land use within and adjacent to the lands applied for, and of known geologic, visual, cultural, or archaeological features, and the known habitat of fish and wildlife, particularly threatened and endangered species, that may be affected by the proposed or reasonably anticipated exploration or mining operations; and

(v) A brief description of the proposed measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, damage to fish and wildlife or other natural resources, air and noise pollution, and hazards to public health and safety; to reclaim the surface; and to otherwise meet applicable laws and regulations which the applicant wishes to have considered by the authorized officer.

(c) *Final Showing.* After the permittee receives the technical environmental analysis report and proposed lease form prepared in accordance with § 3521.1-5 of this subpart, he shall submit the following information:

(1) Estimated revenues;

(2) All the estimated costs that a prudent person would consider before deciding to operate a mine, including the cost of:

(i) Developing the mine;

(ii) Removing the mineral;

(iii) Processing necessary to place the mineral in a saleable condition;

(iv) Transporting the mineral product to the point of sale (f.o.b.);

(v) Applicable royalties and taxes; and

(vi) Complying with existing governmental regulations, reclamation and environmental standards, and proposed lease terms;

(3) A comparison of estimated costs and estimated revenues; and

(4) If the permittee intends to mine the deposit in the land covered by the permit in conjunction with related deposits, the permittee's showing may include the estimated costs and revenues of the combined mining venture.

(d) *Additional showing for permits issued for potassium, sodium, and sulphur.* In addition, if the prospecting permit was granted for sodium, sulphur, or potassium, the lease application shall also contain sufficient information to show that the land is chiefly valuable for the development of the mineral deposit discovered.

(e) *Amount of detail required.* The information submitted by the permittee shall be sufficient to enable the authorized officer to ascertain whether the permittee's showing has a reasonable factual basis and supports his assertion that:

(1) He has found a valuable deposit of the minerals covered by the permit; and

(2) The land is chiefly valuable for the mineral deposit if the permit was issued for sodium, sulphur, or potassium.

(f) *Rental to be submitted.* The initial application must be accompanied by the first year's rental at the rate of 25 cents per acre or fraction thereof except that:

(1) Sulphur. The application shall be accompanied by the first year's rental at the rate of 50 cents per acre or fraction thereof.

(2) Solid (hardrock) minerals. The application shall be accompanied by a payment of $1 for each acre or fraction thereof included in the application, but not less than $20.

(g) *Action if additional information is needed.* (1) If the permittee has not submitted the information this section requires, the authorized officer shall inform the permittee of the omissions and shall give the permittee an opportunity to submit the necessary information. The request for additional information shall specify:

(i) The information the permittee has failed to provide; and

(ii) The date by which the permittee must submit the omitted information, but the authorized officer shall allow no less than 60 days for a response.

(2) The authorized officer may grant the permittee an extension of time to respond to a request for additional information if the permittee requests an extension before the expiration of the period originally stated.

(3) The authorized officer shall reject the lease application if the permittee does not respond to a request for information on time.

(h) *Action if showing is satisfactory.* The authorized officer shall issue a lease to the permittee, if, after reviewing the lease application, he determines:

(1) That the permittee has presented information that has a reasonable factual basis, and that the information supports the permittee's assertion that:

(i) He has found a valuable deposit of the mineral covered by the permit; and

(ii) If the permit was issued for sodium, sulphur or potassium, that the land is chiefly valuable for the mineral deposit; and

(2) That the permittee has taken into account all the factors required by this section.

(i) *Basis for denial of lease application.* The authorized officer may reject the application and inform the permittee of the ground for the rejection, or request additional information under the procedures in paragraph (g) of this section if he determines that the evidence submitted by the permittee does not support his assertion that:

(1) A valuable deposit of the mineral covered by his permit or

(2) If the permit was issued for sodium, sulphur, or potassium, that the land is chiefly valuable for the mineral deposit.

(j) *Hearing and appeal procedures.* (1) If the permittee's application is rejected, he may file a notice of appeal and statement of reasons for appeal in accordance with the procedures of 43 CFR Part 4.

(2) The permittee shall have a right to a hearing before an Administrative Law Judge in the Office of Hearings and Appeals if he has alleged, in his application, facts sufficient to show that he is entitled to a lease.

(3) At the hearing the permittee shall have both the burden of going forward and the burden of proof, and must show by a preponderance of the evidence that he has discovered a valuable deposit of the minerals, and if his application is for a sodium, sulphur or potassium lease, that the land is chiefly valuable for the mineral deposit discovered.

(30 U.S.C. 189)

[41 FR 18848, May 7, 1976, as amended at 41 FR 43149, Sept. 30, 1976; 44 FR 42651, July 19, 1979]

§ 3521.1-2 Qualifications.

(a) Compliance with Subpart 3502 required.

§ 3521.1-3 Special requirements.

(a) *Sodium and sulphur.* An application for sodium or sulphur preference right lease must show that the land is chiefly valuable for that mineral.

§ 3521.1-4 Technical examination/environmental analysis.

In connection with an application for a lease, the authorized officer, with the assistance of the Mining Supervisor, shall make a technical examination and environmental analysis.

(a) The technical examination shall include: (1) An examination of the technical aspects of the proposed operations set forth in the lease application; and

(2) An evaluation of the impacts of such operations on other land uses, resources, or land management programs on or adjacent to the area.

(b) The environmental analysis shall include an analysis of the impact of the proposed operations set forth in lease application.

(30 U.S.C. 189)

[41 FR 18848, May 7, 1976]

§ 3521.1-5 Technical examination/environmental analysis report.

(a) Following completion of the technical examination and environmental analysis described in the preceding section, the authorized officer shall prepare a report which sets forth recommendations as to (1) land where reclamation is not attainable or assured; (2) measures required to comply with the reclamation and performance standards set forth in Subpart 3041 of this Chapter; (3) necessary conditions and amounts of bonds to cover estimated reclamation costs for areas that will be disturbed during the initial 5-year period of the lease, permit, or license; (4) any additional, more stringent requirements needed in the lease pursuant to § 3041.2-2(a) of this subpart; and (5) proposed lease terms and stipulations.

(b) The authorized officer shall send a copy of this report to the lease applicant.

(30 U.S.C. 189)

[41 FR 18848, May 7, 1976]

§ 3521.2 Initiation of offer for competitive lease.

§ 3521.2-1 Application or Bureau motion.

(a) *Application*—(1) *Forms.* (i) Where filed and copies. An application for a lease must be filed in duplicate in the proper office. No specific form is required. The application should include the information set forth in paragraphs (a)(1) (ii) to (v) of this section.

(ii) The applicant's name and address.

(iii) State of citizenship and qualifications.

(iv) A complete and accurate description of the lands for which the lease is desired. See § 3501.1-3.

(v) Evidence that the land is valuable for the mineral for which application is made, with a statement as to the character, extent and mode of occurrence of the deposit.

(2) *Additional Statements Required.* The contemplated investment for the development and purchase of equipment of a producing mine of a stated average daily output. *Phosphate.* To the extent such information is known to the applicant, a description of the phosphate and associated or related mineral deposits in the land based upon such actual examination as can be effected without an injury to the land or deposits (such examination shall not be deemed a trespass), giving nature and extent of the deposits; an outline in general terms of the proposed method of mining and processing the same; the proposed investment in mining operations thereon, and processing facilities therefor.

(3) Evidence showing in sufficient detail that:

(i) The amount of phosphate lands, Federal and non-Federal, held by him, together with the lands described in the application are necessary for his proposed development plan.

(ii) He intends to explore, mine and develop the property in good faith.

(iii) His proposed operations of the property will be in accordance with good conservation practice and this additional development is needed in order to supply an existing demand which cannot otherwise be reasonably met.

[42 FR 25470, May 17, 1977, as amended at 44 FR 42651, July 19, 1979]

§ 3521.2-2 Qualifications.

(a) Compliance with Subpart 3502 is required.

(b) Bureau motion. (1) Bureau of Land Management responsibility.

(2) Geological Survey responsibility.

(c) *Leasing units*—(1) *Phosphate.* If the authorized officer shall determine, after consultation with the Mining Supervisor of the Geological Survey that specific lands or deposits, not under an outstanding permit or application for preference right lease, which constitute an acceptable leasing unit are subject to phosphate lease, they will be offered for such lease on the terms and conditions to be specified in the notice of lease offer to the qualified person who offers the highest bonus by competitive bidding equal to the fair market value of the mineral deposit either at public auction or by sealed bids as provided in the notice of lease offer.

(2) *Solid (hardrock) minerals.* Any qualified person may file an application for the competitive offering of such deposits. Leasing units may not exceed, in reasonably compact form, 2,560 acres of land described in the manner required by this section. The authorized officer may prescribe a lesser area for any mineral deposit if the Geological Survey reports that such lesser area is adequate for a logical leasing unit.

(i) *Exception*—(*a*) *Phosphate.* In a notice for a phosphate lease, the detailed statement will set forth that the terms of minimum production will not be reduced or waived at the lessee's request as provided in § 3503.3-2(b)(3), (d), (e), or upon a satisfactory showing that market conditions are such that the lessee cannot operate except at a loss.

(*b*) *Asphalt.* All leases will be issued through competitive bidding only in the same manner as that provided for in Subpart 3120.

(*c*) *Publication.* Notice of offer of lands or deposits for lease by competitive bidding will be by publication once a week, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands are situated.

[42 FR 25470, May 17, 1977]

§ 3521.2-3 Notice of lease offer.

(a) *Contents.* (1) The notice will show the time and place of sale, whether the sale will be at public auction or by sealed bids, the description of the land and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the successful bidder to pay for publication of that notice may be obtained.

(2) It will also contain a statement that sealed bids may not be modified or withdrawn unless the modification or withdrawals are received prior to the time fixed for opening of the bids.

(3) The detailed statement will set forth the terms and conditions of the sale, including the manner in which the bids may be submitted, and statements (a) that the successful bidder will be required, prior to the issuance of a lease, to pay his proportionate share of the total cost of publication of the notice of lease offer, and that the successful bidder's share shall be that proportion of the total advertising cost, that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared.

(4) The detailed statement will also contain a warning to all bidders against violation of 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders.

(5) The detailed statement will specify that the Government reserves the right to reject any and all bids. If the sale is by public auction, the statement of terms and conditions of the sale will also specify that sealed bids may be submitted. If any bid be rejected, the deposit will be returned.

§ 3521.2-4 Qualifications of successful bidder.

(a) Compliance with Subpart 3502 is required as well as the bid deposit and statement of citizenship and holdings.

(1) When the sale is by public auction, before bidding is commenced by those persons present, the authorized officer conducting the sale will open and read to those persons the sealed bids received on or before the time set in the notice of lease offer. The successful bidder at a sale by public auction must on the day of sale deposit with the authorized officer conducting the sale and each bidder at a sale by sealed bid must submit with his bid, the following: Certified check, cashier's check, bank draft, money order or cash for one-fifth of the amount of the bid by him, and a statement over the bidder's own signature with respect to citizenship and interests held, similar to that prescribed in Subpart 3502.

§ 3521.2-5 Award of lease (competitive).

(a) *Notification of Award.* Bids will be received only until the hour on the date specified in the notice of competitive leasing. All bids submitted after the hour will be rejected. The authorized officer will read all sealed bids. If the procedure calls for sealed bids followed by oral bids, the oral bidding will begin at the level of the highest sealed bid received which must at least equal the fair market value determination of the U.S. Geological Survey. After the oral bidding has ceased, the highest bid will be announced. No decision to accept or reject the high bid will be made at this time. The sale will be adjourned and the sale panel will convene to determine if the high bid adequately reflects fair market value. The recommendations of the panel will be sent to the authorized officer who will make the final decision to accept a bid or reject all bids, as soon as possible, after the sale date. The successful bidder will begin to be notified in writing. The Department reserves the right to reject any and all bids.

(b) The use of bidding competition between tracts (intertract bidding) is hereby authorized when and if the

Bureau of Land Management and the U.S. Geological Survey determine it is needed in the public interest. The authorization to utilize intertract competition does not preclude the use of any other form of competitive bidding procedure.

(c) *Unsurveyed lands.* If, the land is unsurveyed, the successful bidder will not be required to comply with the requirements for lease issuance until the land has been surveyed. See § 3501.1-2.

[35 FR 9714, June 13, 1970, as amended at 41 FR 22054, June 1, 1976]

§ 3521.3 Approval.

§ 3521.3-1 Preference right lease and competitive lease.

(a) *Form of lease.* Lease shall be on a form approved by the Director.

(1) *Exception*—(i) *Asphalt.* The form of lease will be substantially the same as that set forth in 47 L.D. 426-429. The right is reserved to insert in the lease such other terms and conditions as may be deemed necessary for the protection of the surface of the land, its resources and any other lessees of the lands.

(b) *Unsurveyed lands.* Compliance with § 3501.1-2 is required.

§ 3521.3-2 Compliance with notice of competitive lease offer.

(a) (1) *Action by successful bidder.* Four copies of the lease will be sent to the successful bidder, who will be required not later than the 15th day after his receipt thereof, or the 30th day after the date of the sale, whichever is later, to execute them, pay the balance of the bonus bid, the first year's rental, and the cost of publication of the notice of lease offer as specified in § 3521.2-3 and file a bond as required by Subpart 3504.

(2) A successful bidder may, in lieu of paying the balance of the bonus bid, substitute pro tanto a certificate of bidding rights acquired in exchange for a relinquishment of an existing coal, sodium, phosphate, potassium, or sulphur lease or preference right lease application which has been deemed suitable for exchange under the provisions of Subpart 3526 of this title.

(b) *Death of bidder.* If the bidder dies before the lease is issued there must be compliance with § 3502.8.

[35 FR 9714, June 13, 1970, as amended at 37 FR 10364, May 20, 1972; 42 FR 64346, Dec. 23, 1977]

§ 3521.4 Rejection.

§ 3521.4-1 Preference right lease.

Mining operations carried on prior to the effective date of a lease shall constitute an act of trespass.

[41 FR 36023, Aug. 26, 1976]

§ 3521.4-2 Competitive lease.

(a) *Failure to comply with requirements*—(1) *Penalty.* If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under the Mineral Leasing Act.

(i) *Exception*—(*a*) *Asphalt in Oklahoma.* If a bidder after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and deposited in the general fund of the Treasury of the United States. (See Act of June 28, 1944 (53 Stat. 463, 485)).

Subpart 3522—Continuation of Lease Terms

SOURCE: 35 FR 9715, June 13, 1970, unless otherwise noted.

§ 3522.1 Renewal of leases.

§ 3522.1-1 Application.

An application for renewal of sodium, sulphur or solid (hardrock) minerals lease must be filed in the appropriate land office within 90 days prior to the expiration of the lease term. Thereafter, the lessee will be notified of the terms and conditions to be prescribed in the renewal lease. Unless the lessee files written objections to the proposed terms, or files a relinquishment of the lease within 30 days after receipt of such notice, he will be deemed to have agreed to such terms and to the renewal of the lease. Prior to the issuance of a renewal lease, the lessee will be required to submit a new bond as prescribed in Subpart 3504.

§ 3522.1-2 Terms.

(a) *Sodium.* Sodium leases are issued with preferential right to renew the lease for successive periods of 10 years.

(b) *Sulphur.* Sulphur leases are issued with the preferential right to renew the lease for successive periods of 20 years.

(c) *Solid (hardrock) minerals.* The lessee will be granted a right of renewal for successive periods, not exceeding 10 years each, under such reasonable terms and conditions as the Secretary of the Interior may prescribe, including the revision of or imposition of stipulations for the protection of the surface of the land as may be required by the agency having jurisdiction thereover.

(d) *Exceptions*—(1) *Solid (hardrock) minerals.* Upon failure of the lessee to file an application for an extension within the specified period the lease will expire 30 days after the end of its primary term without notice to the lessee and the lands will thereupon become subject to new application for leasing permits.

§ 3522.2 Renegotiation of lease terms.

§ 3522.2-1 Terms and conditions.

Potassium and phosphate. The terms and conditions of potassium and phosphate leases are subject to readjustment at the end of each 20-year period succeeding the effective date of the lease unless otherwise provided by law at the time of the expiration of such periods. Before the expiration of each 20-year period, whenever feasible, the lessee will be notified of the proposed readjustment of terms or notified that no readjustment is to be made. Within 30 days after receipt of the notice, unless the lessee files his objection to the proposed readjusted terms, or the lessee files a relinquishment of the lease, he will be deemed to have agreed to such readjusted terms.

[41 FR 56646, Dec. 29, 1976, as amended at 44 FR 42651, July 19, 1979]

Subpart 3523—Relinquishments and Cancellations

SOURCE: 35 FR 9716, June 13, 1970, unless otherwise noted.

§ 3523.1 Relinquishments.

Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. If the lands are not described by legal subdivision, a partial relinquishment must describe definitely the lands surrendered and give the exact area thereof.

§ 3523.1-1 Where filed and copies.

A relinquishment must be filed in the proper office and filed in triplicate.

§ 3523.1-2 Acceptance.

Upon its acceptance it shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to provide for the preservation of any mines or productive works or permanent improvements on the leased lands in accordance with the regulations and terms of the lease.

§ 3523.1-3 Relinquishments for value.

The terms and conditions under which the Department will accept relinquishment of a mineral lease for value given in return are set out in Subpart 3526 of this title.

[42 FR 64346, Dec. 23, 1977]

§ 3523.2 Cancellations.

§ 3523.2-1 Judicial proceedings.

(a) If the lessee shall fail to comply with the provisions of the act, or of the general regulations promulgated and in force at the date of the lease, or at the effective date of any readjustment of the terms and conditions thereof under § 3522.2 or make default in the performance or observance of any of the terms, covenants, and stipulations of the lease and such failure or default shall continue for 30 days after service of written notice thereof by the lessor, then the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of the lease as provided in section 31 of the act. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause of forfeiture, or for the same cause occurring at any other time.

(b) *Exception—Solid (Hardrock) minerals—Default.* Except as provided in § 3511.4, if a lessee fails to comply with the general regulations in force at the date of the lease, or, as to a lease at the effective date of any readjustment of the terms and conditions thereof, or defaults with respect to any of the terms, covenants, or stipulations of the lease, and such failure or default continues for 30 days after service of written notice thereof by the Government then the lease may be canceled. A waiver of any particular cause for cancellation shall not prevent the cancellation of the lease for any other cause, or for the same cause occurring at any other time. Until such cancellation is noted on the appropriate records of the Proper Office, the lands will not be open to further application for lease.

[35 FR 9716, June 13, 1970, as amended at 44 FR 42651, June 19, 1979]

§ 3523.3 Termination.

Any lease shall terminate automatically if the lessee fails to pay the rental on or before the anniversary date of the lease. However if time for payment falls upon any day on which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely. The termination of the lease for failure to pay the rental must be noted on the official records of the proper office. Until such notation is made, the lands included in such lease are not subject to issuance of any other lease.

Subpart 3524—Special Rights

SOURCE: 35 FR 9716, June 13, 1970, unless otherwise noted.

§ 3524.1 Leasing of additional deposits.

§ 3524.1-1 [Reserved]

§ 3524.1-2 Potassium.

(a) *Character of the lands*—(1) *Availability.* Lands determined to be available for leasing may be offered competitively in the manner specified in Subpart 3521 except that if the Authorizing officer, after consulting with the Mining Supervisor, determines that the potassium deposits in the lands applied for extend into an active mining unit held by the applicant are a normal part of such mining unit, are lacking in sufficient reserves to warrant independent development as a single mining unit, and are not of competitive interest to holders of other active mining units in the area, he may, in the interest of conservation of natural resources, grant to such applicant a lease to mine and remove such adjoining deposits without competitive bidding.

(2) *Terms and conditions.* A noncompetitive lease granted under this subsection shall provide for a royalty on production equal to the highest rate of royalty in any Federal lease in the applicant's adjoining mining unit but not less than 5 percent of the gross value thereof at the point of shipment to market, and at the option of the applicant to be exercised at the time of filing of his application, either a cash bonus of $15 per acre or fraction thereof or a production payment of 1 cent per mine run ton in addition to the royalty specified in the lease. Acreage bonuses must be paid at the time of filing of application. Production payments will be prescribed on the lease form.

(3) *Exceptions.* Potash lands and deposits in or adjacent to Searles Lake, Calif., are subject only to lease by competitive bidding, except as to potash mining rights included in sodium permits and leases issued under Subparts 3510 and 3520.

§ 3524.1-3 Sodium.

(a) *Character of lands*—(1) *Availability.* Where necessary in order to secure the economic mining of sodium compounds, the authorized officer may, in his discretion and after consultation with the Mining Supervisor, permit a person, association, or corporation to hold up to 15,360 acres in any one State, upon submittal of but not necessarily limited to the following information and evidence as proof that the additional acreage is necessary for such purpose:

(b) *Application*—(1) *Requirements.* (i) Whether such person, association, or corporation holds sodium leases and permits covering fee, railroad and State lands within the same area of its public land holdings under sodium leases and permits, and if so, the description of those lands and the amount of acreage involved.

(ii) The reasons why the additional public lands covering acreage in excess of 5,120 acres are actually necessary to secure an economic mining unit.

(iii) A log of all wells drilled for sodium deposits on the lands which such person, association, or corporation holds under sodium lease or permit, together with an analysis of the ore discovered therein.

(c) *Non-chargeable fringe acreage*—(1) *Availability.* Any person, association, or corporation holding acreage approximating 25,600 acres of Federal land, upon a showing that the leased deposits extend into adjoining or adjacent Federal lands and that the lands containing such reserves are a necessary and normal part of a mining unit may file an application with the Authorizing officer to have such adjoining or adjacent Federal land (including lands under lease, permit lands subject to lease, or unleased lands) designated a fringe-acreage that will not be chargeable under § 3501.1-4(b)(3) as to leasehold acreage holdings of the applicant.

(2) *Approval.* If the Authorizing officer shall determine, after consultation with the Mining Supervisor, that the application meets the above requirements and that such designation will result in conservation of natural resources and will provide for economical and efficient recovery as a part of the mining unit, he may designate specific tracts by legal subdivisions not to exceed 2,560 acres in all as non-chargeable to the applicant under § 3501.1-4(b)(3). The intent of this provision is that fringe area deposits not to exceed 2,560 acres may be held without acreage charge upon acquisition of mining rights therein by the applicant. A designation of fringe-acreage under this section shall not constitute a determination that the deposits therein shall be mined only by the applicant.

§ 3524.1-4 Phosphate.

(a) *Character of lands*—(1) *Availability.* A lessee, upon a showing that the leased deposits extend into adjoining Federal lands may, upon application to be filed in the Proper Office, be granted, subject to the acreage limitation under § 3501.1-4(b)(4) a lease for additional acreage, if the authorized officer of the Bureau of Land Management, after consultation with the Mining Supervisor of the Geological Survey shall determine that the increased acreage will result in conservation of natural resources and will provide for the most economical and efficient recovery of a minable deposit without waste.

(2) *Approval; terms and conditions*—(i) *Noncompetitive leases.* In applying this paragraph, fringe acreage in an area not of interest to more than one operator, and lacking sufficient reserves of phosphate deposits to warrant independent development, may be leased noncompetitively without publication either by separate lease or by adding to an existing leasehold (within the aggregate limitation of 2,560 acres), subject to a bonus of not less than $1 an acre, a minimum royalty, and such other terms and conditions as may be determined at the time the lease offer is made.

(ii) *Competitive leases.* If, however, the fringe acreage has sufficient reserves to warrant independent development, or, if, following appropriate inquiry of operators in the area and consultation with the Mining Supervisor, the authorized officer of the Bureau of Land Management determines that there is competitive interest therein, the lands will be offered competitively as provided by Subpart 3520.

§ 3524.2 Use of other minerals.

[35 FR 9716, June 13, 1970. Redesignated at 44 FR 42651, July 19, 1979]

§ 3524.2-1 Phosphate.

Use of silica, limestone or other rock. Any lease to develop and extract phosphates, phosphate rock, and associated or related minerals under the provisions of the act shall provide that the lessee may use so much of any deposit of silica or limestone or other rock situated on any public lands embraced in the lease as may be utilized in the processing or refining of the leased deposits or deposits from other lands upon payments of such royalty as may be determined by the authorized officer, which royalty may be stated in the lease when issued, or, may be provided for by an attachment to the lease to be duly executed by the lessor and the lessee.

[35 FR 9716, June 13, 1970. Redesignated at 44 FR 42651, July 19, 1979]

Subpart 3526—Mineral Leases; Exchange

Source: 42 FR 64346, Dec. 23, 1977, unless otherwise noted.

§ 3526.0-1 Purpose.

This subpart is designed to permit a mineral prospecting permittee, or mineral lessee, to relinquish the lease to be acquired under preference right, or the existing mineral lease, in exchange for a mineral lease of other lands of comparable value for sodium, phosphate, potash or sulphur when the Secretary concludes that operations on the preference right or outstanding lease would not be in the public interest, and that operations on the lands leased in exchange would be in the public interest.

[42 FR 64346, Dec. 23, 1977, as amended at 44 FR 42651, July 19, 1979]

§ 3526.0-3 Authority.

(a) *Sodium.* Section 24 of the Mineral Leasing Act of 1920, 30 U.S.C. 262.

(b) *Phosphate.* Section 9 of the Mineral Leasing Act of 1920, 30 U.S.C. 211.

(c) *Potash.* Section 3 of the Act of February 7, 1927, 30 U.S.C. 283.

(d) *Sulphur.* Section 3 of the Act of April 27, 1926, 30 U.S.C. 273.

(e) *Provisions.* These statutes authorize the Secretary to lease lands known to contain the mineral in question "through advertisement, competitive bidding, or by such other methods as he may by general regulations adopt. * * *"

[42 FR 64346, Dec. 23, 1977, as amended at 44 FR 42651, July 19, 1979]

§ 3526.0-7 Scope.

(a) 43 CFR Subpart 3435 contains the parallel provisions related to exchanges involving the issuance of coal leases, coal lease bidding rights or coal lease modifications. Regulations in both of these two subparts may be used in an inter-mineral exchange.

(b) In the case of any conflict between this subpart and the regulations in 43 CFR Subpart 3435, the provisions governing the lease or lease interests to be issued shall control.

[44 FR 42561, July 19, 1979]

§ 3526.1 When exchange provisions apply.

(a) *Invoking the provisions.* The Secretary shall invoke the provisions of this subpart by notifying the preference right lease applicant or lessee that he is prepared to consider exchange of a mineral lease, for relinquishment of leasing rights on the lands described in the notice.

(b) *In public interest.* An exchange mineral lease, shall not be issued unless the Secretary finds, after completing the procedures in this subpart, that the exchange is in the public interest.

(c) *Public interest defined.* For the purposes of this subpart, an exchange shall be considered in the public interest if the Secretary finds that the benefits of production from the lease or preference right lease would not outweigh the adverse effects, or threat of damage or destruction to agricultural production potential, or scenic, biological, geologic, historic or other public interest values from lease operations. In exercising his discretion to exchange mineral leasing values in the public interest, the Secretary shall consider, but is not limited to consideration of, these elements of the public interest: recreational use; archeological or historic values; threatened or endangered species; proximity of residential or urban areas; study for potential inclusion in the wilderness or wild and scenic rivers systems; and value for public uses, including public highways, airports, and rights-of-way.

[42 FR 64346, Dec. 23, 1977, as amended at 44 FR 42651, July 19, 1979]

§ 3526.2 Exchange procedures.

(a) *Exchange notice.* The Secretary shall notify the preference right lease applicant or lessee when he is prepared to consider an exchange of other mineral leasing values for a tract under lease application or lease.

(1) The exchange notice shall state why the Secretary believes an exchange would be in the public interest.

(2) The exchange notice shall provide that the lease applicant or lessee shall respond by indicating whether he is willing to negotiate for an exchange under this subpart.

(3) The exchange notice may contain a description of the lands on which the Secretary would offer exchange terms. The preference right lease applicant or lessee's reply may describe the lands on which the lease applicant or lessee would accept an exchange lease.

(4) The Secretary may seek the exchange of any part or all of the land under lease or preference right lease application. More than one lease or preference right lease application may be considered. The impact of a partial or multiple exchange shall be taken into account by the Secretary in determining whether such an exchange is in the public interest.

(b) *Showing on preference right.* A prospecting permittee shall have previously submitted a timely mineral preference right lease application containing the initial showing required under § 3521.1-1(b) of this part, and may then have to make the showing required in § 3521.1-1 (c) through (e) of this part, that he has discovered a valuable deposit of the permit mineral on the lands in question (as defined in § 3520.1-1(c) of this part), and for sodium, sulphur and potash that the land is chiefly valuable therefor.

(c) *Right to lease.* If the preference right lease applicant's showing under paragraph (b) of this section demonstrates to the Secretary that he has shown that he has a preference right to a lease, the Secretary is authorized in lieu of issuing a lease on the preference right land under § 3521.1-1(h) of this part to negotiate for the selection of appropriate exchange lands, or if such lands have already been described by the preference right lease applicant or lessee, to establish lease terms on the land to be leased in exchange.

(d) *Comparable lease tracts.* (1) The land leased in exchange shall, to the satisfaction of the lease applicant or lessee and the Secretary, be a lease tract containing a deposit of sodium, phosphate, potash, or sulphur of comparable value. A lease tract shall be deemed "comparable" for exchange purposes when the Secretary concludes that the leasehold value of the more valuable tract is less than ten percent greater than the value of the less valuable tract.

(2) The land proposed for inclusion in an exchange lease must be subject to leasing under the provisions of 43 CFR Subpart 3501.

(e) *Value of exchange right.* The exchange right shall be equal to the fair market value of the leasehold to be relinquished. A reply to the Secretary's notice by the preference right lease applicant or lessee indicating willingness to consider an exchange shall also indicate willingness to provide supporting geologic and economic data that will permit the Secretary to establish the fair market value of the relinquished lease.

(f) *Notice and public hearing.* After the prospective exchange lessee and the Secretary agree on the land to be leased in exchange notice of the proposed exchange shall be published in the FEDERAL REGISTER and in a newspaper or newspapers of general circulation in the counties where both the preference right or leased lands and the exchange lease lands are located. The Notice shall contain notice of a public hearing or hearings to be held not less than 30 days from the date of the Notice in a city or cities located near the tracts in question. The Notice shall also contain the Secretary's preliminary finding that the exchange is in the public interest. The hearing shall provide for public comment on the merits of the proposed exchange.

[42 FR 64346, Dec. 23, 1977, as amended at 44 FR 42651, July 19, 1979]

§ 3526.3 Issuance of lease or grant of other value.

§ 3526.3-1 Issuance of lease.

(a) *Stipulations.* If, after public hearing, the Secretary by written decision concludes that issuance of the exchange lease is in the public interest, he shall proceed to establish lease stipulations for operations on the exchange lease.

(b) *Lease terms.* (1) The exchange lease shall contain a recital that the lessee thereby quitclaims and relinquishes any right or interest in the lease or preference right lease application exchanged.

(2) It shall also contain a recital of the Secretary's finding that issuance is in the public interest.

(3) In all other respects, the exchange lease shall be subject to the relevant provisions of 43 CFR Part 3500 and standard lease terms thereunder.

[42 FR 64346, Dec. 23, 1977, as amended at 44 FR 42651, July 19, 1979]

PART 3540—USE PERMITS

Subpart 3540—Use Permits

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3540.1 Terms.
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Subpart 3541—Mineral Collection Permits

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Subpart 3540—Use Permits

SOURCE: 35 FR 9718, June 13, 1970, unless otherwise noted.

§ 3540.0-1 Purpose.

(a) *Sodium.* A permittee or lessee may be granted a right to use, during the life of the permit or lease, the surface of not exceeding 40 acres of unoccupied nonmineral public land not included within the boundaries of a national forest for camp sites, refining works, and other purposes connected with and necessary to the proper development and use of the deposits covered by the permit or lease.

(b) *Phosphate.* A lessee or permittee may be granted a right to use the surface of not exceeding 80 acres of unappropriated and unentered public land not included within the boundaries of a national forest as may be necessary for the proper extraction, treatment, or removal of the leased deposits.

§ 3540.1 Terms.

§ 3540.1-1 Forms.

(a) *Where to file copies.* Applications for permits to use additional land shall be filed in duplicate in the proper office. Each application must be accompanied by a filing fee of $10 which is not returnable and the first year's rental in the amount specified in § 3540.1-2.

§ 3540.1-2 Rental.

(a) The annual rental charge for use of such land will not be less than $1 an acre or fraction thereof. Payment of the rental shall be made on or before the anniversary date of the permit and will also be required on all use permits issued prior to the effective date of this section, as amended.

(b) *Penalty for nonpayment.* Any use permit shall terminate automatically if the permittee or lessee fails to pay the rental.

§ 3540.1-3 Additional requirements.

(a) *Sodium.* The applications must contain a description of the land as specified in § 3501.1-3 and set forth the reasons why the additional land is necessary to the permittee or lessee for the use named, and whether it is unoccupied and nonmineral.

(b) *Phosphate.* Such applications must set forth the specific reasons why the additional land is necessary to the permittee or lessee for the use named, describe the land desired in accordance with § 3501.1-3 and also set forth the reasons why the land is desirable and adapted to the use named, either in point of location, topography, or otherwise, and that it is unoccupied and unappropriated. The application must also contain an agreement to pay the annual charge prescribed in the permit.

§ 3540.2 Approval.

A use permit will be issued on a form approved by the Director and dated as of the first day of the month after its issuance unless the applicant requests that it be dated the first day of the month of issuance.

Subpart 3541—Mineral Collection Permits

AUTHORITY: Act of March 4, 1917 (16 U.S.C. 520).

SOURCE: 38 FR 18884, July 16, 1973, unless otherwise noted.

§ 3541.0-1 Purpose.

The purpose of the regulations in this Subpart 3541 is to authorize mineral collectors to enter upon lands pursuant to § 3501.2-6(d) of this chapter for the purpose of searching for and removing mineral specimens.

§ 3541.0-2 Objectives.

The objective is to make certain acquired lands within the National Forest System available to mineral collectors at a reasonable fee and under terms and conditions necessary for the conservation of natural resources, multiple use of National Forest System lands, equitable distribution of recreation privileges, and public safety.

§ 3541.0-5 Definitions.

For purposes of the regulations in this Subpart 3541,

(a) "Chief" is the Chief of the Forest Service or his delegate.

(b) "Fee" is a user charge for searching for and removing mineral specimens. It includes a reasonable amount to defray the cost of rehabilitation and revegetation of the lands.

(c) "Permit" is the authorization issued upon payment of a fee to a permittee to search for or remove mineral specimens.

(d) "Permittee" is the holder of a permit.

§ 3541.1 Lands to which applicable.

The acquired lands for which a permit may be obtained are clearly identifiable by boundary markings and corner monuments at each site and by a boundary map available for public inspection in the offices of the Forest Supervisor and District Ranger in charge of the lands. Areas designated for mineral collecting are described as follows:

EMERALD CREEK GARNET AREA

On the East Fork of Emerald Creek, St. Maries Ranger District, St. Joe National Forest, Idaho, about 8 airline miles south of Fernwood and 4 miles west of Clarkia.

MOAT MOUNTAIN SMOKY QUARTZ AREA

About 1,000 feet south of Thompson Falls on Elm Brook, Town of Hales location, on the Saco Ranger District, White Mountain National Forest, N.H., and about 5 miles northwest of Ranger District headquarters in Conway.

§ 3541.2 Permit requirements.

Any individual who desires to search for or remove mineral specimens on acquired National Forest System lands must first have a permit to do so on the lands involved, signed by the authorized representative of the Bureau of Land Management. Permits can be secured in person from the District Ranger in charge of the area.

§ 3541.3 Fees for issuance of permits.

Fees will be determined by the Director and will be based on charges for comparable privileges on private and State lands, including recognition of the costs of supervising the activities of permittees, maintaining and providing improvements, and rehabilitating and revegetating the lands disturbed by mineral collecting.

§ 3541.4 Terms and conditions of permits.

The permit will contain terms and conditions which are deemed necessary by the Director and by the Chief to achieve the objectives of the regulations in this subpart, including, but not limited to, the following:

(a) Limits on the amount of material that may be taken by a permittee per day, calendar year, or other period of time, and the total number of days per calendar year any permittee shall be permitted to collect on any site.

(b) Prohibition or restriction of the use of explosives.

(c) Specifications as to the type of tools and equipment which may be used.

(d) Measures to be taken to prevent destruction of other natural resources or antiquities, to rehabilitate the land after removal of mineral specimens, and to protect the environment in any other respect deemed desirable.

(e) Use of fire.

(f) Cleanup.

(g) Avoidance of hazards.

§ 3541.5 Penalty for violations.

Permits are subject to immediate cancellation if any of the terms and conditions are violated. In such case no portion of the fee will be refunded. The Director may refuse to issue a permit to any individual who violated the terms and conditions of any prior permit.

§ 3541.6 Trespass.

Removal of mineral specimens from any National Forest System lands described in § 3541.1 without, or in violation of, a permit issued under the regulations in this subpart is a trespass against the United States. Trespassers will be liable in damages to the United States and may be subject to criminal prosecution.

PART 3550—FRACTIONAL AND FUTURE INTEREST LEASES AND PERMITS

Subpart 3550—Fractional and Future Interest Leases and Permits

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3550.1 General.
3550.1-1 Applications for permits and leases.
3550.1-2 Qualifications.
3550.2 Present interest.
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3550.3 Future interest.
3550.3-1 Full or fractional interest.
3550.3-2 Effective date of future interest leases.
3550.3-3 Rejection and termination of application.

SOURCE: 35 FR 9718, June 13, 1970, unless otherwise noted.

Subpart 3550—Fractional and Future Interest Leases and Permits

§ 3550.1 General.

(a) *Leases.* Subject to the provisions of section 3 of the Act of Aug. 7, 1947 (30 U.S.C. 351-359) noncompetitive leases for future or fractional interests in lands believed, but not known to contain mineral deposits may be issued whenever the public interest will be best served thereby.

(b) *Prospecting permits.* A prospecting permit for a fractional interest in mineral deposits or a lease for a fractional or future interest in mineral deposits acquired by the Government may be issued in the discretion of the authorized officer.

§ 3550.1-1 Applications for permits and leases.

(a) *Forms*—(1) *Leasable minerals other than oil and gas and coal.*

(i) *Noncompetitive.* Permits or leases of future interest and fractional future interest shall be issued on a form approved by the Director.

(ii) *Competitive.* Applications and requests to have leases offered competitively for lands known to contain mineral deposits should, to the extent possible, conform to and include the information required by § 3501.2 and this section.

(2) *Solid (hardrock) minerals.* No specific form of application for such permits or leases is required, but the application should contain the information required by § 3501.2 as well as the information required by this section where applicable.

(b) *Terms and conditions.* The terms and conditions of such permits and leases will be established on an individual case basis.

(c) *Consent of agency or bureau required.* A prospecting permit for a fractional interest in mineral deposits or a lease for a fractional or future interest in mineral deposits acquired by the Government may be issued in the discretion of the authorized officer, by and with the consent of the appropriate Government bureau or agency having jurisdiction over the land in which such deposits are located.

(d) *Where filed and filing fee.* The application must be filed in triplicate in the proper office accompanied by a filing fee of $10 which is not returnable.

[35 FR 9718, June 13, 1970, as amended at 44 FR 42651, July 19, 1979]

§ 3550.1-2 Qualifications.

(a) Compliance with Subpart 3502 is required.

§ 3550.2 Present interest.

§ 3550.2-1 Fractional interest.

An application for a present fractional interest prospecting permit or lease must show whether the applicant owns all of the fractional mineral interest not owned by the United States or all of operating rights thereto. An applicant for such a permit or lease must have a present interest in the minerals. If applicant does not own all of such mineral interests or all of the operating rights thereto, the extent of the applicant's rights thereto must be shown as well as the names of the other owners of such rights.

§ 3550.3 Future interest.

§ 3550.3-1 Full or fractional interest.

An applicant for a full future interest or future fractional interest prospecting permit or lease must submit, with his application, title evidence of his present interest in the mineral deposits. This may be accomplished by a certified abstract of title or a certificate of title. If applicant is the owner of the operating rights to the minerals and acquired such rights under a lease from or contract with the owner of such minerals, the application should also be accompanied by three copies of such lease or contract. A whole or fractional future interest lease or a prospecting permit for a fractional interest will be issued only to an applicant who owns all or substantially all of the present operating rights to the minerals as fee owner, lessee, or operator holding such rights.

§ 3550.3-2 Effective date of future interest leases.

Future interest leases will become effective on the date of vesting of title to the minerals in the United States as stated in the lease.

§ 3550.3-3 Rejection and termination of application.

(a) An application for a future interest lease filed less than 1 year prior to the date of the vesting in the United States of the present interest in the minerals will be rejected. Upon the vesting in the United States of the present possessory interest in the minerals, all applications for future interest leases outstanding at the time will automatically lapse and thereafter only offers for a present interest lease will be considered.

(b) Since the issuance of a permit or lease to one who, upon such issuance, would have less than a majority interest in the minerals or the operating rights thereto is not regarded as being in the Government's interest, an application for a permit or lease, the granting of which would lead to such result, will be rejected.

PART 3560—SPECIAL LEASING ACTS

Subpart 3561—Gold and silver in confirmed private land grants

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3568.6 Disposal of materials.

Subpart 3561—Gold and Silver in Confirmed Private Land Grants

SOURCE: 35 FR 9719, June 13, 1970, unless otherwise

§ 3561.1 Who may file.

Applications for leases shall be filed in the proper office of the district in which the lands are situated, by the owner of the land under the confirmed title; that is, the original grantee or his record transferee or successor in title, and may include all or any part of the grant for which the applicant holds title at the date of the application.

§ 3561.2 Application.

§ 3561.2-1 Form and contents.

Applications shall give name and address of the applicant, describe the land in which the deposits occur, by legal subdivisions of the public surveys, if so surveyed, otherwise by metes and bounds, or if for the entire area in the grant, the name of the grant, area, and date of patent will suffice. The mineral deposits must also be fully described, giving character, mode of occurrence, nature of the formation, kind, and character of associated minerals, if any, proposed mining methods, estimate of amount of investment necessary to successful operation of the mine or mines contemplated, estimated amount of production of gold, silver, and quicksilver, or any of them, and such other pertinent information the applicant may desire to set forth, including what he considers a reasonable royalty rate under the lease.

§ 3561.2-2 Abstract of title required.

The applicant must also file with his application a duly authenticated abstract of title showing present ownership of the lands or a certificate of the county recorder of deeds that the record title stands in the applicant's name.

§ 3561.3 Requirements for lease.

§ 3561.3-1 Form of lease.

Leases will be issued in accordance with the form prescribed in 52 L.D. 21.

§ 3561.3-2 Rate of royalty; investment required.

When an application is received by the Bureau of Land Management, it will be considered, and if found sufficient to authorize issuance of lease thereunder, a rate of royalty, not less than 5 percent nor more than 12½ percent of the value of the output of gold, silver, or quicksilver at the mine, will be fixed and the amount of investment under the lease will be determined and prescribed.

§ 3561.3-3 Bond.

A bond with approved corporate surety in the sum of $2,000 will be required as a guarantee to the making of the investment fixed in the lease and compliance with the other terms and conditions thereof, but a larger bond may be fixed if that amount is determined to be inadequate for the purpose for which given.

§ 3561.3-4 Execution by applicant.

When a lease has been authorized, forms of lease in accordance with the terms prescribed will be furnished to the applicant, who will be allowed 30 days from notice within which to execute and return the lease to the proper office and to furnish the required bond.

Subpart 3562—Asphalt in Oklahoma

SOURCE: 35 FR 9720, June 13, 1970, unless otherwise noted.

§ 3562.1 Lands to which applicable.

The lands or asphalt deposits subject to the regulations in this part are those situated in Oklahoma which were (a) sold to the United States under the terms of a contract executed October 8, 1947, by and between the Secretary of the Interior and officials of the Choctaw and Chickasaw Nations of Indians in Oklahoma, which contract was ratified by the Act of June 24, 1948 (62 Stat. 596), and (b) acquired when the purchase price provided in the contract was appropriated by the Act of May 24, 1949 (63 Stat. 76, 84).

§ 3562.2 Area and limitation on holdings.

Except where the rule of approximation applies, a lease may not include over 640 acres in reasonably compact form. No person, association or corporation may hold, either directly or indirectly, leases for an area that exceeds in the aggregate 2,560 acres.

§ 3562.3 Lease requirements.

§ 3562.3-1 Qualifications of applicant.

(a) Leases may be issued to citizens of the United States, association of citizens, and corporations organized under the laws of the United States or of any State or Territory thereof.

(b) All applicants must file with the Authorizing officer statements and evidence as follows (unless previously filed, in which event a reference by serial number to the record and where it is filed, together with a statement as to any amendment, will be accepted):

(1) As to citizenship, whether native born or naturalized.

(2) If applicant is an association (including a partnership), it must submit a certified copy of the articles of association and the same showing as to the citizenship and holdings of its members as required of an individual.

(3) A corporation must submit a statement showing:

(i) The State in which it is incorporated.

(ii) That it is authorized to hold leases for asphalt deposits and that the person executing an instrument on behalf of the corporation is authorized to act in such matters.

(iii) The percentage of voting stock, of all the stock owned by aliens and of all the stock owned by those having addresses outside of the United States. When the stock owned by aliens is over 10 percent, additional information may be required.

(iv) The name, address, citizenship, and acreage holdings of any stockholder owning or controlling 20 percent or more of the stock of any class, of the corporation. That holdings do not exceed the acreage limitations specified in § 3562.2.

§ 3562.3-2 Leases for lands disposed of with reservation of asphalt deposits.

Where lands included in a lease have been or may be disposed of with reservation of the asphalt deposits, rights of surface use are subject to the provisions of the law under which such reservation was made. See the Act of February 19, 1912 (37 Stat. 67), and the act of August 3, 1955 (69 Stat. 445), and the regulations thereunder in Subpart 2781 of this chapter.

§ 3562.3-3 Requirements when lands are within a withdrawal.

Where any part of the lands embraced in an application for asphalt lease is within a withdrawal which does not preclude disposition of the asphalt deposits, the head of the Government agency having control will be called upon for a report as to whether there is any objection to the granting of an asphalt lease. Where he recommends that a special stipulation be required to protect the interest of the United States, an appropriate stipulation may be included in the lease.

§ 3562.3-4 Form of lease.

Leases shall be issued on a form approved by the Director. A copy of this, as well as of every other form mentioned in this part, may be obtained from the proper office (see § 3000.5).

§ 3562.3-5 Bond.

A compliance bond in no event less than $1,000, will be required prior to issuance of the lease. The right is reserved at any time before or after issuance of the lease to require an increase of the amount of the bond, whether a corporate, personal or individual surety bond, in any case where the Bureau of Land Management deems it proper to do so.

§ 3562.3-6 Royalty and rental.

(a) *Royalty.* The rate of royalty shall be fixed prior to the issuance of the lease but in no event shall it be less than 25 cents per ton of 2,000 pounds of marketable production.

(b) *Rental.* Beginning with the date of the lease, annual rental payment in advance for each acre or part thereof covered by the lease shall be 25 cents for the first calendar year or fraction thereof, 50 cents for the second, third, fourth and fifth calendar years, respectively, and $1 for each calendar year thereafter during the continuance of the lease, such rental for any year to be credited against royalties accruing under the lease during the year for which the rental was paid.

§ 3562.3-7 Minimum production.

(a) Each lease will provide for the mining of asphalt deposits from the lands involved and the payment of royalty thereon to a value of not less than $1 an acre or fraction thereof each year, beginning with the sixth full calendar lease year, except when operations are interrupted by strikes, the elements, or casualties not attributable to the lessee or unless operations are suspended upon a showing that the lease can not be operated except at a loss because of unfavorable market conditions.

(b) Applications by lessees for relief from the production requirement of leases shall be filed, in triplicate, with the Mining Supervisor, who is authorized to grant such relief. A copy of each application shall be filed in the proper office. Complete information must be furnished showing the necessity for such relief.

§ 3562.4 Competitive leasing.

§ 3562.4-1 Application.

(a) An application for lease must be filed in duplicate in the proper office. A filing fee of $10, which will be retained as a service charge in any event, must accompany the application. No specific form is required, but the application should include the following:

(1) The applicant's name and address.

(2) A complete and accurate description of the lands for which the lease is desired. If the lands have been surveyed under the public land rectangular system, each application must describe the lands by legal subdivision, section, township, and range. When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all applications to lease lands shown on such protracted surveys filed on or after such effective date, must describe the lands only according to the section, township, and range shown on the approved protracted surveys. If the lands have neither been surveyed on the ground nor shown on the records as protracted surveys, each application must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys.

(3) Evidence that the land is valuable for its asphalt content, with a statement as to the character, extent, and mode of occurrence of the asphalt deposits.

(b) The application must be signed by applicant, or by his attorney-in-fact, supported by the power of attorney.

(c) If it be found that the area applied for is not available for leasing, the applicant will be so informed.

§ 3562.4-2 Notice of lease offer.

Notice of offer of lands or deposits for lease will be by publication once a week for four consecutive weeks or for such other period as may be determined, in a newspaper of general circulation in the county in which the lands or deposits are situated. The notice will state the time and place of sale, whether the sale will be at public auction or by sealed bids, the description of the lands and the place where a detailed statement of the terms and conditions of the lease offer and the obligations of the successful bidder to pay for publication of that notice may be obtained. A copy of the notice will be posted in the proper office during the period of publication. The detailed statement will set forth the terms and conditions of the sale, including the manner in which bids may be submitted, and statements (a) that the successful bidder will be required, prior to the issuance of a lease, to pay his proportionate share of the total cost of publication of the notice of lease offer, and that the successful bidder's share shall be that proportion of the total advertising cost, that the number of parcels of land awarded to him bears to the number of parcels for which high bidders are declared, and (b) that the Government reserves the right to reject any and all bids. If any bid be rejected, the deposit will be returned. The commission of any act of intimidation of bidders, or the combination of bidders to hinder or prevent bidding, is unlawful. See 18 U.S.C. 1860.

§ 3562.4-3 Bid deposits.

The successful bidder at a sale by public auction must deposit with the Authorizing officer of the Proper Office, or the officer conducting the sale, on the date of the sale, and each bidder at a sale by sealed bids, must submit with his bid, certified check, cashier's check, bank draft, money order, or cash for one-fifth of the amount of the bid, and evidence of qualifications as required by § 3562.3-1.

§ 3562.4-4 Award of lease.

(a) Upon receipt of the high bid at, and at the close of, an oral auction, or the opening of the sealed bids, the Authorizing officer, subject to his right to reject any and all bids, will award the lease to the successful bidder, who will be notified accordingly. Four copies of the lease will be sent to the successful bidder, who will be required, not later than the 15th day after his receipt thereof, or the 30th day after the date of the sale, whichever is later, to execute them, pay the balance of the bonus bids, the first year's rental, and the cost of publication of the notice of lease offer as specified in this section, and file a bond as required by § 3562.3-5. If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and deposited in the general fund of the Treasury of the United States. (See act of June 28, 1944, 58 Stat. 463, 485.) If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease.

(b) If the bidder dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed; if probate has been completed, or is not required, to the heirs or devisees; and if there are minor heirs or devisees, to their legal guardian or trustee in his name, provided there is filed in all cases the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person, who as executor or administrator submits forms of lease and bond, has authority to act in that capacity and to sign such forms.

(ii) Evidence that the heirs or devisees are the heirs or devisees of the deceased lessee and are the only heirs or devisees of the deceased.

(iii) A statement over the signature of each heir or devisee concerning citizenship and holdings similar to that required by §§ 3562.2 and 3562.3-1.

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the lessee and citing the provisions of the law of the deceased's last domicile showing no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to citizenship and holding similar to that required by §§ 3562.2 and 3562.3-1 except that if the heir or devisee is a minor, the statement must be over the signature of the guardian or trustee.

(3) Where there is a legal guardian or trustee: (i) A certified copy of the court order authorizing the guardian or trustee to act as such and to fulfill in behalf of the minor or minors all obligations of the lease or arising thereunder; statements by the guardian or trustee as to the citizenship and holding of each of the minors and as to his own citizenship and holdings, including his holdings for the benefit of

other minors similar to that required by §§ 3562.2 and 3562.3-1.

[35 FR 9720, June 13, 1970, as amended at 37 FR 10364, May 20, 1972]

§ 3562.5 Modification and leasing of additional lands or asphalt deposits.

A lessee may obtain modification of his lease to include asphalt lands or asphalt deposits contiguous to those embraced in his lease if the Authorized officer shall determine, after consultation with the Mining Supervisor, that it will be to the advantage of the lessee and the United States, but in no event shall the area embraced in such modified lease exceed in the aggregate 640 acres, except where the rule of approximation applies. The lessee must file his application for modification in duplicate in the proper office describing the additional land desired, the reasons for and the advantage to the lessee of such modification. Upon determination by the Authorized officer that the modification is justified and the interest of the United States is protected, the lease will be modified without competitive bidding to include such part of the land or deposits as he shall prescribe. If, however, it is determined that the additional lands or deposits can be developed as part of an independent operation or that there is a competitive interest in them, they may be offered as provided in § 3562.4-2. Each application for modification must be accompanied by a filing fee of $10 which will not be returnable.

§ 3562.6 Renewal leases.

An application for a renewal lease must be filed in duplicate in the proper office within 90 days prior to the expiration of the lease term. Thereafter, the lessee will be notified of the terms and conditions to be prescribed in the renewal lease. Unless the lessee files written objections to the proposed terms, or files a relinquishment of the lease within 30 days after receipt of such notice, he will be deemed to have agreed to such terms and to the renewal of the lease. Prior to the issuance of a renewal lease, the lessee will be required to submit a satisfactory bond as prescribed in § 3562.3-5. Each application for renewal must be accompanied by a filing fee of $10 which will not be returnable.

§ 3562.7 Termination of leases.

§ 3562.7-1 Relinquishment.

Upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease or any legal subdivision thereof. A relinquishment must be filed in duplicate in the proper office. Upon its acceptance it shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to make payment of all accrued rental and royalties and provide for the preservation of any mines or productive works or permanent improvements on the lands relinquished in accordance with the regulations and terms of the lease.

§ 3562.7-2 Cancellation.

If the lessee fails to comply with the general regulations in force at the date of the lease, or defaults with respect to any of the terms, covenants, or stipulations of the lease, and such failure or default continues for 30 days after service of written notice thereof by the lessor, then the lessor may bring appropriate court proceedings to forfeit and cancel the lease as provided in section 31 of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 188). A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause, or for the same cause occurring at any other time.

§ 3562.8 Transfers.

§ 3562.8-1 Transfers, including subleases.

(a) Lease may be transferred in whole or in part. The approval of a transfer of part of the land in a lease will create a new lease for the transferred portion. The approval of a transfer will not extend the renewal periods of the lease. Transfers, whether by direct assignments, operating agreements, subleases, working or royalty interests, or otherwise, must be filed for approval in duplicate at the proper office within 90 days after execution. Evidence of the qualifications of the assignee or transferee to hold the lease, as required by § 3562.3-1 must be submitted simultaneously. Before a transfer of a lease will be approved, the transferee must submit a new bond, or the consent of the surety on the lease bond to the substitution of the transferee as principal thereon, and the lease account must be in good standing. If the transfer is for part of the land only, it must be for a legal subdivision and (1) the consent of the surety to the transfer and its agreement to remain bound as to the interest retained by the lessee must be submitted, as well as (2) a new bond with the transferee as principal covering the portion of the lands transferred. A transfer will take effect the first day of the month following its approval, or if the transferee requests, in writing, the first day of the month of the approval.

(b) An application for approval of any instrument transferring a lease, or interest therein, must be accompanied by a service fee of $10. An application not accompanied by such a fee will not be accepted. The fee will not be returned even though the application is later withdrawn or rejected.

(c) No transfer will be approved if the transferee is not qualified to take and hold a lease or if his bond is insufficient. A minor, except a minor heir or devisee of a lease, is not qualified to hold a lease and a transfer to a minor will not be approved.

(d) In order for the heirs or devisees of a deceased holder of a lease, an operating agreement, or a royalty interest in a lease, to be recognized by the Department as the holder of the lease, agreement or interest, there must be furnished the appropriate showing required under § 3562.4-4.

(e) The assignor or sublessor and his surety will continue to be responsible for the performance of any obligation under the lease until the assignment or sublease is approved. If the assignment or transfer is not approved, their obligations to the United States shall continue as though no such assignment or transfer had been filed for approval. After approval the assignee or sublessee and his surety will be responsible for the performance of all lease obligations notwithstanding any terms in the assignment or sublease to the contrary.

§ 3562.8-2 Limitation on overriding royalties.

An overriding royalty interest shall not be created by assignment or otherwise exceeding 50 percent of the rate of royalty first payable to the United States under the lease or an overriding royalty interest which when added to any other overriding royalty interest exceeds that percentage, excepting that where an interest in the leasehold, or operating agreement is assigned, the assignor may retain an overriding royalty interest in excess of the above limitation if he shows to the satisfaction of the Bureau of Land Management, that he has made substantial investments for improvements on the land covered by the assignment.

Subpart 3563—Nevada

SOURCE: 35 FR 9722, June 13, 1970, unless otherwise noted.

§ 3563.1 Silica sands and other nonmetallic minerals.

§ 3563.1-1 Applicability of other regulations.

Deposits of phosphate, and sodium within the lands shall be subject to disposal pursuant to the applicable regulations issued under the Act of February 25, 1920 (41 Stat. 437) as amended. The regulations issued under the act of February 27, 1927 (44 Stat. 1057) shall govern the disposal of potash deposits. The following regulations shall apply to all other deposits of nonmetalliferous minerals within the lands.

[35 FR 9722, June 13, 1970, as amended at 44 FR 42651, July 19, 1979]

§ 3563.1-2 Lands to which applicable.

The Act applies to lands withdrawn by Executive Order No. 5105, which withdrew all public lands, not theretofore withdrawn, within the following described townships:

NEVADA

All of Township 15 South, Ranges 66, 67, 68 East, M. D. M.

All of Township 16 South, Ranges 66, 67, 68 East, M. D. M.

All of Township 17 South, Ranges 66, 67, 68 East, M. D. M.

and also a tract described as follows:

That area of unsurveyed land east of Timber Mountain bounded on the north by latitude 37°10′20″, on the south by latitude 37°7′46″, and lying between meridians of longitude 116°20′16″ and 116°23′28″ comprising an area of 9 square miles and including what is known as Fortymile Canyon Pueblo.

§ 3563.1-3 Application.

(a) *Form and contents.* (1) No specific form of application is required, but it should cover, in substance, the following points, namely:

(i) Applicant's name and address.

(ii) Proof of citizenship of applicant; by a statement of such fact if native born; or, if naturalized, by a statement giving the date of naturalization, court in which naturalized, and number of certificate if known; if a corporation, by certified copy of the articles of incorporation thereof, and showing as to residence and citizenship of its stockholders.

(iii) A statement of all holdings by the applicant of leases under these regulations, pending applications therefor and interests, directly or indirectly, held in such leases.

(iv) A complete and accurate description of the lands for which the lease is desired. If the lands have been surveyed under the public land rectangular system, each application must describe the lands by legal subdivision, section, township, and range. When protracted surveys have been approved and the effective date thereof published in the FEDERAL REGISTER, all applications to lease lands shown on such protracted surveys, filed on or after such effective date, must describe the lands only according to the section, township, and range shown on the approved protracted surveys. If the lands have neither been surveyed on the ground nor shown on the records as protracted surveys, each application must describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys.

(v) Proposed method of conducting exploratory operations, amount of capital available for such operations, and the diligence with which such exploration will be prosecuted.

(vi) Statement of the applicant's experience in operations of this nature, together with reference as to his character, reputation, and business experience.

(vii) The right is reserved to offer the lease by competitive bidding to the responsible bidder offering the highest cash bonus, in which case the filing of the application will not give any priority to the applicant if he is not the successful bidder.

(b) *Showing as to acreage holdings.* Every applicant for a lease hereunder must show that with the area applied for, his or its interest or interests in such leases and other applications therefor, directly or indirectly, will not exceed in the aggregate 2,560 acres.

(c) *Filing fee required.* Application must be accompanied by a filing fee of $10 and filed in the proper office.

§ 3563.1-4 Lease terms and conditions.

(a) *Qualifications.* Leases may be issued to (1) citizens of the United States, (2) associations of such citizens, or (3) corporations organized under the laws of the United States or any State or territory thereof.

(b) *Form of lease.* Leases issued pursuant to this part shall be on a form approved by the Director.

(c) *Bonds.* The applicant will be required prior to the issuance of the lease to furnish and maintain thereafter a bond with acceptable corporate surety, or two qualified individual sureties, in the sum of $1,000 or such other amount as may be fixed, conditioned against failure of the lessee to comply with the provisions of the lease.

(d) *Royalty or rental.* The rate of royalty will be fixed prior to the issuance of the lease, but in no case will the royalty rate be less than two per centum of the quantity or gross value of the output of the leased mineral.

Rental for the first year must be paid at the rate of 25 cents per acre or fraction thereof prior to issuing the lease and thereafter annually in advance at the rate of $1 per acre or fraction of an acre, such rental to be credited against royalties accruing for the year for which paid.

(e) *Leasing units.* Leasing units shall consist of legal subdivisions, if the lands are surveyed, of not more than 640 acres of public lands in a reasonably compact form or, if the lands are not surveyed, shall consist of not more than 640 acres in square or rectangular form with north and south and east and west boundaries, so as to approximate legal subdivisions, described by metes and bounds connected to a corner of the public land surveys by course and distance.

(f) *Duration of lease.* Leases will be issued for a period of 5 years subject to renewal at the expiration thereof for additional periods of 5 years each, on such reasonable terms as may be prescribed at the time of such renewal. An application for renewal of a lease must be filed in duplicate in the appropriate land office within 90 days prior to the expiration of the lease term and be accompanied by a filing fee of $10, which will be retained as a service charge even though the application should be rejected or withdrawn in whole or in part. Thereafter, the lessee will be notified of the terms and conditions to be prescribed in the renewal lease. Unless the lessee files written objections to the proposed terms, or files a relinquishment of the lease within 30 days after receipt of such notice, he will be deemed to have agreed to such terms and to the renewal of the lease. Prior to the renewal of a lease, the lessee will be required to submit a new bond as prescribed in § 3563.1-4(c).

§ 3563.1-5 Transfer of leases.

Leases may be transferred in whole or in part. To the extent applicable, the regulations in § 3562.8 shall govern all transfers of such leases.

§ 3563.2 Leases of sand and gravel in certain lands patented to the State.

§ 3563.2-1 Authority and regulations.

The Act of June 8, 1926 (44 Stat. 708), authorizes the Secretary of the Interior to dispose of the reserved minerals in the lands patented to the State of Nevada under such conditions and under such rules and regulations as he may prescribe. The regulations in this § 3563.2-1 are promulgated for the purpose of permitting the disposal of valuable deposits of sand and gravel in such lands.

§ 3563.2-2 Lands to which applicable.

The Act applies to the lands patented to the State of Nevada which are described in the following schedule.

SCHEDULE OF LANDS PATENTED TO THE STATE OF NEVADA UNDER THE ACT OF JUNE 8, 1926 (44 STAT. 708), AND SUBJECT TO LEASE UNDER CIRCULAR NO. 1622

T. 17 N., R. 24 E., M. D. M., Nevada,
  Sec. 34, SE¼;
  Sec. 35, NW¼SW¼.
T. 9 N., R. 29 E., M. D. M.,
  Sec. 5, lots 1, 2, 3, 4, 5, 6, SW¼NW¼;
  Sec. 8, lots 1 and 2, NE¼NW¼;
  Sec. 16, lot 2;
  Sec. 21, lots 1, 2, 4, 5, 6, SE¼NW¼, NE¼SW¼, SW¼SE¼;
  Sec. 22, lot 1;
  Sec. 26, lots 1, 2, 3, NW¼SW¼, SE¼SW¼;
  Sec. 27, lots 1, 2, 3, NW¼NW¼, SW¼NE¼;
  Sec. 35, lots 1, 2, 3, 4, SW¼NE¼, NW¼SE¼.
T. 35 N., R. 55 E., M. D. M.,
  Sec. 36, all.
T. 14 N., R. 67 E., M. D. M.,
  Sec. 27, S½;
  Sec. 28, S½.
T. 22 S., R. 61 E., M. D. M.,
  Sec. 1, SE¼SE¼;
  Sec. 11, SE¼NE¼, E½SW¼, SE¼;
  Sec. 12, S½NW¼, SW¼, E½;
  Sec. 13, all.
T. 21 S., R. 62 E., M.D.M.,
  Sec. 19, SE¼;
  Sec. 20, S½NW¼, SW¼;
  Sec. 23, E½NW¼, NW¼SW¼;
  Sec. 29, N½NW¼, E½SE¼;
  Sec. 31, SE¼SE¼;
  Sec. 32, S½;
  Sec. 33, SW¼, E½.
T. 22 S., R. 62 E., M. D. M.,
  Sec. 1, SW¼SW¼;
  Sec. 5, lots 1, 2, 3, 4, S½N½, S½;
  Sec. 6, lots 1 and 7, S½NE¼, SE¼, E½SW¼;
  Sec. 7, lots 1, 2, 3, 4, E½W½, E½;

Sec. 8, all;
Sec. 9, N½, NE¼SE¼, S½SE¼;
Sec. 10, all;
Sec. 11, all;
Sec. 12, W½, S½NE¼, SE¼;
Sec. 13, all;
Sec. 14, all;
Sec. 15, all;
Sec. 16, all;
Sec. 17, all;
Sec. 18, lots 1, 2, 3, 4, E½W½, E½.
T. 23 S., R. 63 E., M. D. M.,
Sec. 11, W½;
Sec. 15, E½;
Sec. 22, E½.
T. 16, S., R. 66 E., M. D. M.,
Sec. 25, N½;
Sec. 26, W½NW¼, NW¼SW¼.
T. 17 S., R. 66 E., M. D. M.,
Sec. 1, lots 1, 2, 3, 4, S½N½, S½;
Sec. 12, all;
Sec. 13, all;
Sec. 14, E½;
Sec. 23, all;
Sec. 24, all;
Sec. 26, N½;
Sec. 27, NE¼.
T. 4 S., R. 67 W., M. D. M.,
Sec. 19, E½NW¼, W½NE¼, SE¼NE¼.
T. 17 S., R. 67 E., M. D. M.,
Sec. 13, S½;
Sec. 19, lots 1, 2, 3, 4, E½W½, E½;
Sec. 20, all;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, N½;
Sec. 27, N½.
T. 1 S., R. 68 E., M. D. M.,
Sec. 30, lots 1, 2, 3, 4, E½W½, E½;
Sec. 31, lots 1, 2, 3, 4, E½W½. E½.
T. 2 S., R. 68 E., M. D. M.,
Sec. 6 lots 1, 2, 3, 4, 5, SE¼NW¼, S½NE¼
T. 5 S., R. 71 E., M. D. M.,
Sec. 16, SW¼SW¼;
Sec. 17, E½;
Sec. 21, N½NW¼, SE¼NW¼, NE¼SW¼, SW¼NE¼, W½SE¼, lots 2, 3.
Containing 25,499.47 acres.

§ 3563.2-3 Application.

(a) *Form and contents.* No specific form of application is required, but it should cover, in substance, the following points, namely:

(1) Applicant's name and address.

(2) Proof of citizenship of applicant; by a statement of such fact if native born; or, if naturalized, by a statement giving the date of naturalization, court in which naturalized, and number of certificate if known; if a corporation, by certified copy of the articles of incorporation thereof, and showing as to residence and citizenship of its stockholders.

(3) A statement of all holdings by the applicant of leases under these regulations pending applications therefor and interests, directly or indirectly, held in such leases.

(4) Description of the land for which the lease is desired, by legal subdivisions, a statement as to whether the land is occupied or is being used, the nature and extent of such occupation and use and of any improvements on the land.

(5) Proposed method of conducting exploratory operations, amount of capital available for such operations, the diligence with which such exploration will be prosecuted, and the extent that operations are likely to interfere with any use that is being made of the land by the surface owner.

(6) Statement of the applicant's experience in operations of this nature, together with reference as to his character, reputation, and business experience.

(b) *Filing fee required.* Application must be accompanied by a filing fee of $10 and filed in the proper office.

§ 3563.2-4 Lease terms and conditions.

(a) *Qualifications.* Leases may be issued to (1) citizen of the United States, (2) associations of such citizens, or (3) corporations organized under the laws of the United States or of any State or territory thereof.

(b) *Leasing units.* A leasing unit in any case shall consist of such area of land as shall be determined by the authorized officer of the Department of the Interior to constitute an economic working unit based upon the quantity of sand and gravel in the land, the available market for sand and gravel and such other factors as he may determine to be material.

(c) *Acreage limitations.* In no case shall more than 2,560 acres be leased to any one person, association, or corporation. Every applicant for a lease must show that, with the area applied for, his or its direct or indirect interests in such leases and other application therefor, will not exceed in the aggregate 2,560 acres.

(d) *Form of lease.* Leases will be issued on a form approved by the Director.

(e) *Bonds.* The applicant will be required prior to the issuance of the lease to furnish and maintain thereafter a bond with acceptable corporate surety, or two qualified individual sureties, in the sum of $1,000 or such other amount as may be fixed, conditioned against failure of the lessee to comply with provisions of the lease, and for the protection of the owner of the surface estate from damages resulting from the operation of such lessee.

(f) *Royalty and rentals.* The rate of royalty will be fixed prior to the issuance of the lease, but in no case will the royalty rate be less than two per centum of the quantity or gross value of the output of the leased mineral at the point of shipment to market. Rental for the first year must be paid prior to issuance of the lease at the rate of 25 cents per acre or fraction thereof and thereafter annually in advance at the rate of $1 per acre or fraction of an acre, such rental to be credited against royalties accruing for the year for which paid.

(g) *Duration of lease.* Leases will be issued for a period of 5 years subject to such special terms as may be deemed necessary in the particular case to protect the rights of the surface claimant and in the discretion of the authorized officer, may be renewed at the expiration thereof for additional periods of 5 years each, on such reasonable terms as he may prescribe at the time of such renewal. An application for renewal of a lease must be filed in duplicate in the proper office within 90 days prior to the expiration of the lease term and be accompanied by a filing fee of $10, which will be retained as a service charge even though the application should be rejected or withdrawn in whole or in part. Thereafter the lessee will be notified of the terms and conditions to be prescribed in the renewal lease. Unless the lessee files written objections to the proposed terms, or files a relinquishment of the lease within 30 days after receipt of such notice, he will be deemed to have agreed to such terms and to the renewal of the lease. Prior to the renewal of a lease, the lessee will be required to submit a new bond.

§ 3563.2-5 Transfer of leases.

Leases may be transferred in whole or in part. To the extent applicable, the regulations in § 3562.8 shall govern all transfers of such leases.

Subpart 3564—Reserved Minerals in Lands Patented to the State of California for Park or Other Public Purposes

SOURCE: 35 FR 9624, June 13, 1970, unless otherwise noted.

§ 3564.1 Applicability of other regulations.

The regulations in Subpart 3501, 3502, and 3503 so far as applicable, shall govern the leasing of all potassium, sodium, and phosphate within the area.

[35 FR 9624, June 13, 1970, as amended at 44 FR 42651, July 19, 1979]

§ 3564.2 Lands to which applicable.

The regulations in this subpart apply to the lands patented to the State of California for park purposes.

§ 3564.3 Minerals to be leased.

All disposal of minerals within the reserved areas covered by the section shall be by lease.

§ 3564.4 Notice of application.

The authorized officer of the proper office will notify the surface owner or his authorized representative of each application received. Notice of any proposed offer of lands for lease will also be given to the surface owner prior to publication thereof. Should the surface owner object to the leasing of any tract for reasons determined by the authorized officer to be satisfactory the application will be rejected or the offer of the land for lease will be withheld.

§ 3564.5 Terms and conditions.

§ 3564.5-1 Protection of surface.

All leases issued pursuant to this section shall be conditioned upon compliance by the lessee with all of the laws or rules and regulations of the surface owner for the safeguarding and protection of the plant life, scenic features and park or recreational improvements on the land, not inconsistent with the terms of the lease or this section. The lease shall also provide that any mining work performed upon the lease shall be located consistent with any requirements of the owner of the surface necessary to the protection of the surface rights and uses and so conducted as to result in the least possible injury to plant life, scenic features and improvements and that, upon completion of the mining operation, all excavations, including wells, shall be closed and the property be conditioned for abandonment to the satisfaction of the surface owner. The lease shall further provide that any use of the lands for ingress to and egress from the mine for all necessary purposes shall be on a route to be first approved by the surface owner or his duly authorized representative.

§ 3564.5-2 Bonds.

Each lessee will be required to furnish a bond in such sum as may be deemed adequate, in no case less than $1,000 to insure compliance with the terms of the lease and for the protection of the surface owner.

§ 3564.5-3 Form of lease.

Leases for minerals other than oil and gas will be upon the forms prescribed for the leasing of such minerals under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181 et seq.), as amended and supplemented with necessary deletions and additions.

§ 3564.6 Operating regulations.

All leases will be required to operate under the applicable operating regulations of this Department. The operating regulations are contained in 30 CFR Chapter II: Those applicable to coal in Part 211 and to potash, oil shale, sodium and phosphate, sulphur, gold, silver, and quicksilver in Part 231. Leases for minerals subject to this subpart not listed in the preceding sentence shall be governed by the operating regulations in 30 CFR Part 231.

[35 FR 9624, June 13, 1970, as amended at 44 FR 42651, July 19, 1979; 44 FR 56340, Oct. 1, 1979]

§ 3564.7 Minerals other than oil, gas, coal, potassium, sodium, and phosphate.

§ 3564.7-1 Leasing units.

A leasing unit in any case shall consist of such area of land as shall be determined by the authorized officer to constitute an economic working unit based upon the quantity of the leased mineral in the land, the available market therefor and such other factors as he may determine to be material.

§ 3564.7-2 Acreage limitation.

In no case shall more than 2,560 acres be leased to any one person, association or corporation. Every applicant for a lease must show that, with the area applied for, his or its direct or indirect interests in such leases and other applications therefor, will not exceed in the aggregate 2,560 acres.

§ 3564.7-3 Royalty and rentals.

The rate of royalty will be fixed prior to the issuance of the lease, but in no case will the royalty rate be less than 2 per centum of the quantity or gross value of the output of the leased mineral at the point of shipment to market. Rental for the first year must be paid prior to issuance of the lease at the rate of 25 cents per acre or fraction thereof and thereafter annually in advance at the rate of $1 per acre or fraction of an acre, such rental to be credited against royalties accruing for the year for which paid.

§ 3564.7-4 Qualifications of applicants.

Leases may be issued to (a) citizens of the United States, (b) associations of such citizens, or (c) corporations organized under the laws of the United States or of any State or Territory thereof, provided as to corporations, that no appreciable amount of the stock is held by citizens of countries which do not permit similar or like privileges to citizens of the United States.

§ 3564.7-5 **Filing of application.**

Applications must be accompanied by a minimum fee of $10 for each application embracing not more than 800 acres and an additional fee of $2 for each 160 acres or fraction thereof over 800 acres, and be filed in the proper office.

§ 3564.7-6 **Form and contents of application.**

No specific form of application is required, but it should cover, in substance, the following points, namely:

(a) Applicant's name and address.

(b) Proof of citizenship of applicant; by statement of such fact if native born; or, if naturalized, by statement giving the date of naturalization, court in which naturalized, and number of certificate if known; if a corporation, by certified copy of the articles of incorporation thereof, and showing as to residence and citizenship of its stockholders.

(c) A statement of all holdings by the applicant of leases under this section, pending applications therefor and interests, directly or indirectly, held in such leases.

(d) Description of the land for which the lease is desired, by legal subdivisions, a statement as to whether the land is occupied or is being used, the nature and extent of such occupation and use and of any improvements on the land.

(e) Proposed method of conducting exploratory operations, the estimated duration of such exploration and the extent that operations are likely to interfere with the use of the land for the purposes for which it was granted.

§ 3564.7-7 **Term of lease.**

Leases will be issued for a period of five years and, in the discretion of the authorized officer upon application of the lessee filed within the 90-day period immediately preceding the expiration date of the lease, may be renewed at the expiration thereof for additional periods of five years each, on such reasonable terms as he may prescribe at the time of such renewal.

§ 3564.7-8 **Form of lease.**

Leases will be issued on a form approved by the Director.

Subpart 3565—National Forest Lands In Minnesota

Source: 35 FR 9724, June 13, 1970, unless otherwise noted.

§ 3565.0-3 **Authority.**

The Act of June 30, 1950 (64 Stat. 311; 16 U.S.C. 508) (b)) permits the prospecting, development, and utilization of those mineral resources in public domain lands, including lands received in exchange for public domain lands, or for timber on such lands pursuant to Group 2200 of this chapter, situated within the exterior boundaries of the national forests in Minnesota, which because of withdrawal, reservation, statutory limitation, or otherwise, are not subject to the general mining laws of the United States or to mineral leasing laws, and for the development and utilization of which no other authority exists. The Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181) as amended provides for the leasing of phosphate, sodium, and potassium deposits in public domain lands, including such lands generally in national forests. See Group 3100 of this chapter.

[35 FR 9724, June 13, 1970, as amended at 44 FR 42651, July 19, 1979]

§ 3565.1 **Minerals to be leased.**

All disposal of mineral resources covered by this regulation shall be by lease or permit.

§ 3565.2 **Consent of Secretary of Agriculture.**

Leases or permits under the Act of June 30, 1950, may be issued only with the prior consent of the Secretary of Agriculture or his delegate, and subject to such conditions and stipulations as that official may prescribe to insure adequate utilization and protection of the lands for the primary national forest purpose for which they are being administered.

§ 3565.3 **Regulations applicable.**

To the extent that they are applicable and not inconsistent herewith, the leasing of minerals under the Act of June 30, 1950, shall be governed by

§ 3501.2, Subparts 3510 and 3520. Any lease or permit issued under this subpart shall state that it is subject to the terms and provisions of the Act of June 30, 1950.

Subpart 3566—Lake Mead Recreation Area

SOURCE: 35 FR 9725, June 13, 1970, unless otherwise noted.

§ 3566.0-3 Authority.

The Act of October 8, 1964 (78 Stat. 1039; 16 U.S.C. 460n) provides for mineral leasing within the Lake Mead Recreation Area, subject to such limitations, conditions, or regulations as the Secretary may prescribe, and to such extent as will not be inconsistent with either the recreational use or the primary use of that portion of the area heretofore withdrawn for reclamation purposes.

§ 3566.1 Lands to which applicable.

The area subject to the regulations in this part is that area of land and water which is shown on a certain map identified as "boundary map, RA-LM-7060-B, revised July 17, 1963," which is on file and which is available for public inspection in the office of the Director of the National Park Service and in the headquarters office of the superintendent of the Lake Mead National Recreation Area. The area subject to these regulations may be revised by the Secretary as authorized in the act.

§ 3566.1-1 Excepted areas.

Mineral deposits and materials in the following areas shall not be open to disposal under the provisions of this part:

(a) All lands within 200 feet of the center line of any public road, or within 200 feet of any public utility including, but not limited to, electric transmission lines, telephone lines, pipelines, and railroads.

(b) All land within the smallest legal subdivision of the public land surveys containing a spring or water hole, or within one-quarter of a mile thereof on unsurveyed public land.

(c) All land within 300 feet of Lake Mead or Lake Mohave, measured horizontally from the shore line at maximum water surface elevation and all lands within the area of supervision of the Bureau of Reclamation around Hoover and Davis Dams as shown on the map of the Lake Mead National Recreation Area (NRA—L.M. 2291).

(d) All land within any developed and/or concentrated public use area or other area of outstanding recreation significance as designated by the Superintendent on the map (NRA—L.M. 2297), of Lake Mead National Recreation Area which will be available for inspection in the office of the Superintendent.

§ 3566.2 Regulations applicable.

Except as otherwise specifically provided in this section regulations in Subparts 3501, 3502 and 3521 and in 30 CFR Part 231 shall govern the leasing of mineral deposits which are presently subject to location under the general mining laws. However, mineral deposits of coal, oil, gas, phosphate, potassium, and sodium shall be governed by regulations issued under the Acts of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181), as amended, and February 27, 1927 (44 Stat. 1057; 30 U.S.C. 281), as amended.

[35 FR 9724, June 13, 1970, as amended at 44 FR 42652, July 19, 1979; 44 FR 56340, Oct 1, 1979]

§ 3566.3 Application.

§ 3566.3-1 Form and contents.

An applicant must give his name and address and citizenship qualifications in the manner prescribed in Subpart 3502, describe the land for which a lease is desired in terms of legal subdivisions if surveyed, otherwise by metes and bounds and state the kind of mineral for which a lease is desired. The applicant must also give the reasons why he believes the mineral sought to be leased can be developed in the land in paying quantities and furnish such facts as are available to him respecting the known occurrence of the mineral in the land, the character of such occurrence and its probable worth as evidencing the existence of a workable deposit of such mineral. Each application must be accompanied by a filing fee of $10 which will not be returnable.

§ 3566.4 Leases.

§ 3566.4-1 Qualifications.

Leases may issue to (a) citizens of the United States, (b) associations of such citizens and (c) corporations organized under the laws of the United States or of any State or Territory thereof.

§ 3566.4-2 Leasing units.

Leasing units may not exceed 640 acres consisting of legal subdivisions of the lands if surveyed, in reasonably compact form or, if the lands are not surveyed, of a square or rectangular area with north and south and east and west boundaries so as to approximate legal subdivisions described by metes and bounds connected to a corner of the public survey by courses and distances. The officer issuing any lease may prescribe a lesser area for any mineral deposit if the Geological Survey reports that such lesser area is adequate for an economic mining operation.

§ 3566.4-3 Royalties, rentals and minimum royalties.

(a) *Royalties.* The rate of royalty shall be fixed prior to the issuance of the lease but in no event shall it be less than 2 percent of the amount or value of the minerals mined.

(b) *Rentals.* Rentals shall not be less than 25 cents per acre payable annually until production is obtained.

(c) *Minimum royalties.* After production is obtained the lessee must pay a minimum royalty of $1 per acre.

§ 3566.4-4 Terms and conditions.

Each lease will contain provisions for the following: Diligent development of the leased property except when operations are interrupted by strikes, the elements, or casualties not attributable to the lessee unless operations are suspended upon a showing that the lease cannot be operated except at a loss because of unfavorable market conditions; occupation and use of the surface of the claim shall be restricted to such as is reasonably necessary to the exploration, development and extraction of the leased minerals. No vegetation will be destroyed or disturbed except where necessary to mine and remove the minerals; lessee shall not conduct operations in such a manner as to contaminate the waters of Lake Mead or Lake Mohave through dumping, drainage or otherwise. Lessee shall not erect any structures or open or construct roads or vehicle trails without first obtaining written permission from an authorized officer or employee of the National Park Service. The permit for a road or trail may be conditioned upon the permittee's maintaining the road or trail in passable condition, satisfactory to the officer in charge of the area so long as it is used by the permittee or his successor. The right is reserved to insert other terms in the lease when deemed necessary for the protection of the surface, its resources and use for recreation.

§ 3566.4-5 Duration of lease.

Leases will be issued for a period of 5 years and any lease in good standing will be subject to renewal for successive 5-year terms on such reasonable terms as may be prescribed by the Secretary of the Interior at the time of any such renewal upon application filed within 90 days prior to the termination of the lease term for which renewal is sought unless otherwise provided by law or unless the land has been restored from the withdrawal at the expiration of such term.

§ 3566.5 Lease by competitive bidding.

The right is reserved to offer competitively a lease for any land applied for under this part if, in the judgment of the State Director, there is evidence of a competitive interest in the land, or if the Geological Survey finds that the land contains a deposit in paying quantities of the mineral to be leased.

§ 3566.6 Disposal of materials.

Materials within the public lands covered by the regulations in this part which are not subject to lease hereunder shall be subject to disposal under the Materials Act of July 31, 1947 (61 Stat. 681; 43 U.S.C. 1185), as amended, subject to the conditions and limitations on occupancy and operations prescribed for leases in this part.

Subpart 3567—National Forest Wilderness

SOURCE: 35 FR 9726, June 13, 1970, unless otherwise noted.

§ 3567.0-1 Scope and purpose.

This subpart sets forth procedures to be followed by persons wishing to prospect on lands within National Forest Wilderness, and special provisions pertaining to mineral leases, licenses, and permits within National Forest Wilderness.

§ 3567.0-5 Definition.

As used in this subpart the term "National Forest Wilderness" means an area or part of an area of National Forest land designated by the Wilderness Act as a wilderness area within the National Wilderness Preservation System.

§ 3567.1 Prospecting within National Forest Wilderness for the purpose of gathering information about mineral resources.

§ 3567.1-1 Requirements for preservation.

The provisions of the Wilderness Act do not prevent any activity, including prospecting, within National Forest Wilderness for the purpose of gathering information about mineral or other resources if such activity is conducted in a manner compatible with the preservation of the wilderness environment. While information gathered by prospecting concerning mineral resources within National Forest Wilderness may be utilized in connection with applications for mineral leases, licenses, or permits on lands which may be open to such applications, attention is directed to the fact that no such applications will be granted after December 31, 1983.

§ 3567.1-2 Regulations of the Secretary of Agriculture.

All persons wishing to carry on any activity, including prospecting, for the purpose of gathering information about mineral or other resources on lands within National Forest Wilderness should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the regulations of the Secretary of Agriculture governing surface use of the lands for such activity.

§ 3567.2 Mineral leases, licenses, and permits.

§ 3567.2-1 Applicability of laws and regulations.

Until midnight, December 31, 1983, all laws pertaining to mineral leasing and the regulations of this chapter pertaining thereto effective during such period shall, to the same extent as applicable before September 3, 1964, extend to National Forest Wilderness, subject to the provisions of such regulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act.

§ 3567.2-2 Stipulations required.

All mineral leases, licenses, and permits covering lands within National Forest Wilderness, issued on or after September 3, 1964, shall contain such stipulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act for the protection of the wilderness character of the lands consistent with the use of the lands for the purposes for which they are leased, licensed, or permitted. In addition to containing such stipulations as may be prescribed by the Secretary of Agriculture, any mineral lease, license, or permit covering lands within National Forest Wilderness shall contain a provision that it is issued subject to the provisions of the Wilderness Act and the regulations issued thereunder.

§ 3567.2-3 Applicable regulations of Secretary of Agriculture.

All persons seeking or holding a mineral lease, license, or permit covering lands within National Forest Wilderness, issued on or after September 3, 1964, should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the applicable regulations of the Secretary of Agriculture.

§ 3567.3 Withdrawal from mineral leasing.

Effective at midnight, December 31, 1983, subject to valid rights then existing, the minerals in lands within National Forest Wilderness are withdrawn from leasing by virtue of the provisions of section 4(d)(3) of the Wilderness Act.

Subpart 3568—Whiskeytown-Shasta-Trinity National Recreation Area

SOURCE: 35 FR 9726, June 13, 1970, unless otherwise noted.

§ 3568.0-3 Authority.

Section 6 of the Act of November, 8, 1965 (Pub. L. 89-336; 79 Stat. 1295), authorizes the Secretary of the Interior to permit the removal of the nonleasable minerals from lands (or interest in lands) under his jurisdiction within the Whiskeytown-Shasta-Trinity National Recreation Area in the manner prescribed by section 10 of the Act of August 4, 1939, as amended (53 Stat. 1196; 43 U.S.C. 387), and from those under the jurisdiction of the Secretary of Agriculture within the recreation area in accordance with the provisions of section 3 of the Act of September 1, 1949 (63 Stat. 683; 30 U.S.C. 192c); and he may permit the removal of leasable minerals from lands (or interest in lands) within the recreation area in accordance with the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.), or the Acquired Lands Mineral Leasing Act of August 7, 1947 (30 U.S.C. 351-359), if he finds that such disposition would not have significant adverse effects on the purpose of the Central Valley project or the administration of the recreation area.

§ 3568.1 Lands to which applicable.

The area subject to the regulations in this subpart is that shown in drawing numbered BOR-WEST 1004, dated July 1963, entitled "Proposed Whiskeytown-Shasta-Trinity National Recreation Area," which is on file and available for public inspection in the office of the Director of the Bureau of Outdoor Recreation, Department of the Interior, Washington, D.C.

§ 3568.1-1 Consent of Secretary of Agriculture.

Any lease or permit respecting minerals in lands administered by the Secretary of Agriculture shall be issued only with his consent and subject to such conditions as he may prescribe.

§ 3568.2 Regulations applicable.

§ 3568.2-1 Locatable minerals.

Except as otherwise specifically provided in this section, the regulations in Subparts 3501, 3502, and 3521 and in 30 CFR Part 231 shall govern the leasing of mineral deposits which are presently subject to location under the general mining laws.

§ 3568.2-2 Leasable minerals other than oil and gas.

Mineral deposits of phosphate, potassium, and sodium shall be governed by regulations issued under the Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181-263), as amended, and February 27, 1927 (44 Stat. 1057; 30 U.S.C. 281-287), as amended.

[35 FR 9726, June 13, 1970, as amended at 44 FR 42652, July 19, 1979]

§ 3568.3 Application.

§ 3568.3-1 Form and contents.

An applicant must give his address and citizenship qualifications in the manner prescribed in this subchapter, describe the land in terms of legal subdivisions if surveyed, otherwise by metes and bounds, and disclose the mineral for which the lease is desired. The applicant must state whether the mineral applied for can be developed in paying quantities stating the reasons therefor and must furnish such facts as are available to him respecting the known occurrence of the mineral, the character of such occurrence and its probable value as evidencing the existence of a workable deposit of such mineral. Each application must be accompanied by a filing fee of $10 which will not be returnable.

§ 3568.4 Leases.

§ 3568.4-1 Qualifications.

Leases may issue to (a) citizens of the United States, (b) associations of such citizens, and (c) corporations organized under the laws of the United States or of any State thereof.

§ 3568.4-2 Leasing units.

Leasing units may not exceed 640 acres consisting, if the lands are surveyed, of legal subdivisions in reasonably compact form or, if the lands are not surveyed, of a square or rectangular area with north and south and east and west boundaries so as to approximate legal subdivisions described by metes and bounds connected to a corner of the public survey by courses and distances. The authorized officer of the Bureau of Land Management may prescribe a lesser area for any mineral deposit if the Geological Survey reports that such lesser area is adequate for an economic mining operation.

§ 3568.4-3 Royalties, rentals and minimum royalties.

Rentals and royalties will be determined on the basis of the fair market value. In no event shall the rentals or royalties be less than:

(a) Fifty cents per acre payable annually in advance until production is obtained.

(b) One dollar per acre after production is obtained as a minimum royalty payable annually in advance.

(c) Two percent of the amount or value of the minerals mined, the exact amount of royalty to be fixed prior to the issuance of the lease.

§ 3568.4-4 Terms and conditions.

Each lease will contain provisions for the following:

(a) Diligent development of the leased property except when operations are interrupted by strikes, the elements, or casualties not attributable to the lessee unless operations are suspended upon a showing that the lease cannot be operated except at a loss because of unfavorable market conditions;

(b) Occupation and use of the surface of the claim shall be restricted to such as is reasonably necessary to the exploration, development and extraction of the leased minerals and subject to any special rules to protect the values of the recreation area;

(c) No vegetation will be destroyed or disturbed except where necessary to mine and remove the minerals;

(d) Lessee shall not conduct operations in such a manner as to adversely affect the purpose of the Central Valley project through dumping, drainage, or otherwise;

(e) Lessee shall not erect any structure or open or construct roads or vehicle trails without first obtaining written permission from an authorized officer or employee of the National Park Service. The permit for a road or trail may be conditioned upon the permittee's maintaining the road or trail in passable condition, satisfactory to the officer in charge of the area so long as it is used by the permittee or his successor;

(f) The right is reserved to insert other terms in the lease when deemed necessary for the protection of the surface, its resources and use for recreation.

§ 3568.4-5 Duration of lease.

Leases will be issued for a period of 5 years. Any lease in good standing upon which production in paying quantities has been obtained will be subject to renewal for successive 5 year terms on such reasonable terms as may be prescribed by the Secretary of the Interior. Application for renewal must be filed within 90 days prior to the termination of the lease term for which renewal is sought unless land has been withdrawn from the recreation area at the expiration of such term.

§ 3568.5 Lease by competitive bidding.

Leases may be offered competitively for any land applied for under this part without regard to the quantity or quality of the mineral deposit that may be present therein.

§ 3568.6 Disposal of materials.

Materials within the public lands covered by the regulations in this part which are not subject to the provisions of §§ 3568.2-1 and 3568.2-2 of this section, shall be subject to disposal under the Materials Act of July 31, 1947 (61 Stat. 681; 43 U.S.C. 1185), as amended, subject to the conditions and limitations on occupancy and operations prescribed for leases in this part.

Group 3600—Mineral Materials Disposal

PART 3600—MINERAL MATERIALS DISPOSAL; GENERAL

Subpart 3600—General

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3600.0-3 Authority.
3600.0-5 Definitions.

Subpart 3601—Limitations; Disposal of Mineral Materials

3601.1 Disposal when valid claims exist under public land laws or when certain unpatented mining claims exist.
3601.2 Damage to lands or to other resources.
3601.3 Appropriation subject to material sale.

Subpart 3602—Trespass

3602.1 Unauthorized removal of mineral materials.

Subpart 3604—Community Pits

3604.1 Non-exclusive disposals.

CROSS REFERENCE: Lands subject to mineral material disposal: See § 3600.0-3.

Subpart 3600—General

SOURCE: 35 FR 9727, June 13, 1970, unless otherwise noted.

§ 3600.0-3 Authority.

(a) The Materials Act of July 31, 1947, amended by the acts of July 23, 1955 and September 25, 1962 (30 U.S.C. 601, 602), authorizes the disposal of mineral materials including, but not limited to, petrified wood and common varieties of sand, stone, gravel, pumice, pumicite, cinders and clay, in the public land of the United States (including the O&C lands as described in § 5040.0-3 of this chapter), if the disposal of such materials (1) is not otherwise expressly authorized by law, including, but not limited to the act of June 28, 1934, as amended (43 U.S.C. 315), and the United States mining laws, and (2) is not expressly prohibited by the laws of the United States, and (3) would not be detrimental to the public interest. Disposals of pumicite, within certain areas of the Katmai National Monument, Alaska, may also be made under this act, however, under appropriate contract conditions for the protection of the monument. Act of April 15, 1954 (68 Stat. 53) (expired April 15, 1969, but reference is retained for adjudication of pending applications).

(b) Where the lands have been withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or of a State, county, municipality, water district or other local governmental subdivision or agency, the Secretary of the Interior may make disposals under the regulations in this part only, with the consent of such Federal department or agency or of such State or local governmental unit. The act provides that the Secretary of Agriculture shall dispose of materials from lands administered by him for national forest purposes or for purposes of title III of the Bankhead-Jones Farm Tenant Act or where withdrawn for any other function of the Department of Agriculture. See 36 CFR, Part 251 for Forest Service regulations relative to the disposal of materials in the national forests.

(c) Disposal of mineral materials under the act may not be made from any lands in any national park or national monument or from any Indian lands or lands set aside or held for the use or benefit of Indians including lands over which jurisdiction has been transferred to the Department of the Interior by Executive Order for the use of Indians.

(d) The Act authorizes the Secretary of the Interior in his discretion to permit free use of mineral materials by any Federal or State governmental agency unit or subdivision, including municipalities, or any association or corporation not organized for profit for use other than for commercial or industrial purposes or resale.

[35 FR 9727, June 13, 1970, as amended at 41 FR 29122, July 15, 1976]

§ 3600.0-5 Definitions.

(a) "Bureau" means Bureau of Land Management, Department of the Interior.

(b) "Director" means the Director of the Bureau of Land Management.

(c) "Authorized officer" means the Government official who has been duly authorized to sign a contract for the sale of mineral materials from public lands or to supervise operations and take action under such contract.

(d) "Mineral materials" include, but are not limited to "common varieties" of sand, stone, gravel, pumice, pumicite, cinders, clay and other mineral materials, and petrified wood.

(e) The word "Act" when used in this part refers to the Act of July 31, 1947, as amended.

Subpart 3601—Limitations; Disposal of Mineral Materials

SOURCE: 35 FR 9728, June 13, 1970, unless otherwise noted.

§ 3601.1 Disposal when valid claims exist under public land laws or when certain unpatented mining claims exist.

Mineral material disposals may not be made under the Act from public lands on which: (1) There are valid, existing claims to the land by reason of settlement, entry, or similar rights obtained under the public land laws; (2) there are any unpatented mining claims located either before or after July 23, 1955, which have not been cancelled by appropriate legal proceedings; (3) there are valid unpatented mining claims located on or after July 23, 1955, for valuable minerals that are not a "common variety", occurring in, or associated with "common variety" minerals.

§ 3601.2 Damage to lands or to other resources.

No sale of material shall be made under this part where the authorized officer determines that the aggregate damages to public lands and resources will exceed the benefits derived from such disposal. Sound conservation practices shall be exercised by all permittees or purchasers in the removal of materials under the provisions granted by this part.

§ 3601.3 Appropriation subject to material sale.

Any subsequent settlement, location, lease, sale, or other appropriation under the general land laws, including the mineral leasing and mining laws, of lands covered by a materials sale contract, shall be subject to the outstanding contract of sale. Unless otherwise provided by contract, the contract purchaser, notwithstanding any subsequent appropriation under other provisions of the general land laws, shall have the right to extract and remove the materials until the termination of the contract. During the term, the purchaser shall have the right to use and occupy so much of the described land as is reasonably incidental and necessary to the fulfillment of the contract. All contracts of sale shall be subject to the continuing rights of the United States to use the surface and to issue leases, permits, and licenses involving the use and occupancy of the surface, provided that such subsequently authorized use shall not endanger or materially interfere with the purchaser's production or removal of the materials under contract.

Subpart 3602—Trespass

§ 3602.1 Unauthorized removal of mineral materials.

The extraction, severance, injury, or removal of timber or mineral materials from public lands under the jurisdiction of the Department of the Interior, except when authorized by law and the regulations of the Department, is an act of trespass. Trespassers will be liable in damages to the United States, and will be subject to prosecution for such unlawful acts. See Subpart 9239 of this chapter.

[35 FR 9728, June 13, 1970]

Subpart 3604—Community Pits

§ 3604.1 Non-exclusive disposals.

Non-exclusive disposals may be made under Subparts 3610 and 3621 from the same deposit within areas designated by the State Director for this purpose. These pit sites are not to exceed 40 acres in size, except they may be enlarged as the initial 40-acre site is depleted. Such permits issued for sale or removal of material from established community pit sites will constitute a superior right to remove the material as against any subsequent claim or entry of the lands.

[35 FR 9728, June 13, 1970]

PART 3610—MINERAL MATERIALS SALES

Subpart 3610—Mineral Material Sales; General

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3610.2 Appraisal and measurements.
3610.3 Qualifications of applicants.
3610.4 Payments.
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3611.1 Limitations in value.
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Subpart 3612—Competitive Sales

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Subpart 3613—Contracts

3613.1 Award of contracts.
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Subpart 3610—Mineral Material Sales; General

SOURCE: 35 FR 9728, June 13, 1970, unless otherwise noted.

§ 3610.1 Request for sale.

Mineral materials may be sold upon the request of any interested party or upon the authorized officer's own initiative.

§ 3610.2 Appraisal and measurements.

(a) No materials, other than that designated in the contract or permit, shall be extracted unless designated in advance and written permission given by the authorized officer and payment made therefor.

(b) All materials to be sold shall be appraised and in no case shall it be sold at less than the appraised value.

(c) Such mineral material shall be measured by volume, weight, or truck tally, or combination of these methods, or such other form of measurement as the authorized officer determines to be in the public interest.

§ 3610.3 Qualifications of applicants.

A bidder or purchaser for the sale of mineral materials must be (a) an individual who is a citizen of the United States; (b) a partnership; (c) an unincorporated association composed wholly of such citizens; or (d) a corporation authorized to transact business in the States in which the mineral material is located. A bidder must also have submitted a deposit in advance of the sale as required by § 3612.4.

§ 3610.4 Payments.

(a) Mineral materials shall not be removed unless advance payment has been made as provided in the contract.

(b) For sales of not more than $2,000 the full amount shall be paid at the execution of the contract.

(c) Fixed unit prices in excess of $2,000 may be paid by installments. Installments shall be at least 10 percent of the total purchase price or $1,000, whichever is less. As provided in § 3612.4, the first installment must be paid as a deposit when the bid is submitted. The second installment must be paid prior to the commencement of removal operations. Remaining installments shall be due and payable without notice whenever the value of the material removed shall equal the sum of the second and subsequent installments paid by the purchaser. The total amount of the purchase price must be paid prior to 60 days before the expiration date of the contract. The purchaser shall not be entitled to a refund on a fixed unit sale even though the amount of material removed or designated for removal may be less than the estimated total volume shown in the contract.

(d) Sales for the duration of production or sale of all the mineral materials in a specified area which exceed $2,000 shall be conditioned on the following terms of payment.

(1) A first installment of not less than $500 shall be paid upon the execution of the contract. Remaining installments in amounts to be specified shall be due and payable without notice whenever the value of the material removed shall equal the sum of the first and subsequent installments. Mineral materials shall not be removed unless the advance installment has been made as provided in the contract.

(2) All contracts for sale of material under this paragraph (d)(2) shall provide for periodic reappraisal of the mineral material. The frequency of the reappraisal shall be specified in the sale contract. If, upon termination, the total payments made under the contract exceed total value of the material removed, such excess shall be returned to the purchaser, except for payments made in lieu of minimum production pursuant to paragraph (d)(3) of this section.

(3) Annual production shall be required in an amount sufficient to return to the United States a sum of money equal to the first installment. In lieu of such minimum production there shall be an annual payment in the amount of the first installment which will nto be credited to future production. Payments for or in lieu of minimum annual production shall be due and payable and must be received by the authorized officer on or before the anniversary date of the execution of the contract, failing which the contract shall be considered breached and terminated, and all money paid pursuant to the contract shall be forfeited.

(e) The purchaser shall be required to make a report of operations under his contract with each installment payment, and to provide verification of the amount of material removed when called upon to do so by the authorized officer.

§ 3610.5 Performance bonds.

(a) A performance bond of not less than 20 percent of the total contract price will be required for contracts of $2,000 or more. When the total contract price is less than $2,000, bond requirements, if any, will be in the discretion of the authorized officer. The performance bond may be:

(1) Bond of a corporate surety shown on the approved list issued by the U.S. Treasury Department and executed on an approved standard form; or

(2) Personal surety bond, executed on an approved standard form if the authorized officer determines the principals and bondsmen are capable of carrying out the terms of the contract; or

(3) Cash bond; or

(4) Negotiable securities of the United States.

(b) Where the materials sale contract has required a bond in connection with construction of a road, the authorized officer may, upon satisfactory completion of the road construction, reduce the amount of the performance bond by the amount of all or a portion of the estimated road construction costs: *Provided, however,* That the total amount of the performance bond shall, in no event, be reduced below 20 percent of the total contract price.

§ 3610.6 Assignments.

(a) The purchaser may not assign the contract or any interest therein without the written approval of the authorized officer. An assignment shall contain all the terms and conditions agreed upon by the parties thereto.

(b) The authorized officer will not approve any proposed assignment involving contract performance unless the assignee (1) is authorized to transact business in the State in which the mineral material is located; (2) submits such information as is necessary to assure the authorized officer of his ability to fulfill the contract; and (3) furnishes a performance bond as required by § 3610.5 or obtains a commitment from the previous surety to be bound by the assignment when approved. Upon approval of an assignment by the authorized officer, the assignee shall be entitled to all the rights and subject to all the obligations under the contract, and the assignor shall be released from any further liability under the contract.

§ 3610.7 Extension of time.

If the purchaser shows that his delay in removal was due to causes beyond his control and without his fault or negligence, the authorized officer may grant an extension of time, not to exceed one year, upon written request of the purchaser. Such written request must be received not later than 30 days prior to the expiration date of the time for removal but not earlier than 90 days prior thereto. Additional extensions may be granted if the purchaser submits the same type of written request not later than 30 days prior to the expiration date of an extension but not earlier than 90 days prior thereto. No extension may be granted without reappraisal as provided in § 3610.8.

§ 3610.8 Reappraisals.

If an extension is granted as provided in § 3610.7 mineral materials remaining on the contract area, title to which has not passed to the purchaser, shall be reappraised by the authorized officer. Such reappraised prices shall become the new unit prices for the purpose of computing the reappraised total purchase price except that the new unit prices shall not be less than the unit prices that were in effect during the original time for removal or previous extension.

§ 3610.9 Time for removal.

Time for removing materials sold, except that sold under a duration of production contract or contract for the sale of all material within a specified area, shall not exceed a period of 2 years except that such time for removal may be extended as provided in § 3610.7.

Subpart 3611—Noncompetitive (Negotiated) Sales

SOURCE: 35 FR 9729, June 13, 1970, unless otherwise noted.

§ 3611.1 Limitations in value.

When it is determined by the authorized officer to be in the public interest and where the sale is of property for which it is impracticable to obtain competition, he may sell at not less than the appraised value, without advertising or calling for bids, mineral materials not exceeding $5,000 in value. Where it is impracticable to obtain competition and the materials are to be used in connection with the development of Federal lands under a mineral lease or leases issued by the United States, sales under this paragraph may be made in a sum not exceeding $10,000.

§ 3611.2 Need in government program.

The authorized officer may sell, at not less than the appraised value, without advertising or calling for bids, mineral materials not exceeding $10,000 in value when it is in the public interest and the contract is for materials to be used in connection with a public works improvement program on behalf of a Federal, State, or local governmental agency and the public exigency will not permit the delay incident to advertising.

§ 3611.3 Limitation in total sales.

The total aggregate of negotiated sales which may be made in any one State to or for the benefit of any one person, partnership, association or corporation in any period of twelve consecutive months shall not exceed $10,000.

§ 3611.4 Exceptions.

The dollar limitations in § 3611.1 and § 3611.3 shall not apply to sales in the State of Alaska of mineral materials which the authorized officer determines are needed for construction, operation, maintenance or termination of the Trans-Alaska Pipeline System or the Alaska Natural Gas Transportation System.

[45 FR 77438, Nov. 24, 1980]

Subpart 3612—Competitive Sales

SOURCE: 35 FR 9729, June 13, 1970, unless otherwise noted.

§ 3612.1 Competitive sales: general.

All sales other than those specified in Subpart 3611 shall be made after inviting competitive bids through publication and posting in conformance with this subpart. Sales shall not be held sooner than one week after the last advertisement. No competitive sales shall be offered by the authorized officer unless there is access to the sale area which is available to anyone who is qualified to bid.

§ 3612.2 Advertising.

(a) Material sales offered by competitive bidding shall be advertised in a newspaper of general circulation in the area where the material is located and notice of the sale shall be posted in a conspicuous place in the office where bids are to be submitted. Such advertisement shall be published on the same day once a week for two consecutive weeks except that notice of sales amounting to $5,000 or less need be published only once.

(b) The advertisement of sale shall state the location by legal description of the tract or tracts on which the material is being offered, the kind of material, estimated quantities, the unit of measurement, appraised prices, time and place for receiving and opening of bids, minimum deposit required, the access situation, the method of bidding, the office where additional information may be obtained, and such additional information as the authorized officer may deem necessary.

(c) Advertisement of materials appraised at $1,000 or less may be published or posted at the discretion of the authorized officer.

§ 3612.3 Conduct of sales.

(a) Bidding at competitive sales shall be conducted by the submission of written sealed bids, oral bids, or a combination of both as directed by the authorized officer. In the event of a tie in high sealed bids, the highest bidder shall be determined by oral auction among the high bidders. If no oral bid is made which is higher than the sealed bids, the highest bidder shall then be determined by lot. Except for the first bid, no oral bid will be considered or recorded which is not higher than the highest preceding bid. In oral auction sales the high bidder must confirm his bid in writing immediately upon being declared the high bidder.

(b) At the request of the authorized officer, or the officer conducting the sale, bidders must furnish evidence of qualification or if such evidence has already been furnished, make appropriate reference to the record containing it.

(c) When it is in the interest of the Government to do so the authorized officer may reject any or all bids and may waive minor deficiences in the bids or the mineral material sale advertisement.

§ 3612.4 Bid deposits.

(a) For cash sales a bid deposit of not less than 10 percent of the appraised value of the mineral materials offered is required. The authorized officer may, at his discretion, require larger deposits.

(b) For installment sales, the bid deposit shall be not less than the amount of the first installment required under § 3610.4 and specified in the advertisement of the sale.

(c) Sealed bids must be accompanied by the deposit. For mineral materials offered at oral auction, bidders must make the deposit prior to the opening of the bidding.

(d) Deposits may be in the form of cash, money orders, bank drafts, cashier's or certified checks made payable to the Bureau of Land Management, or bid bonds of a corporate surety shown on the approved list of the U.S. Treasury Department. Upon conclusion of the bidding, the bid deposits of all bidders, except the high bidder, shall be returned. The deposit of the successful bidder will be applied on the purchase price at the time the contract is signed by the authorized officer. If the contract is not awarded to the high bidder his deposit will be returned, and the next successive high bidder will be called upon for a remittance of the full amount of the first installment.

Subpart 3613—Contracts

§ 3613.1 Award of contracts.

(a) The authorized officer may require the high bidder to furnish such information as is necessary to determine the ability of the bidder to perform the obligations of the contract. The contract shall be awarded to the high bidder, unless he is not qualified or responsible or unless all bids are rejected. If the high bidder is not qualified or responsible or fails to sign and return the contract together with the required performance bond, the contract may be offered and awarded for the amount of the high bid to the highest of the bidders who is qualified, responsible, and willing to accept the contract.

(b) Within 30 days after receipt of the contract the successful bidder shall sign and return the contract, together with any required performance bond: *Provided*, That the authorized officer may, in his discretion, extend such period an additional 30 days if the extension is applied for in writing and granted in writing within the first 30-day period. If the successful bidder fails to comply within the first 30-day period, his bid deposit shall be forfeited as liquidated damages.

[35 FR 9730, June 13, 1970]

§ 3613.2 Contract forms.

All sales shall be made on contract forms approved by the Director. The authorized officer may include additional provisions in the contract to cover conditions peculiar to the sale area, such as road construction, protection of improvements, and watersheds and recreational values. Such additional provisions shall be made available for inspection by prospective bidders during the advertising period.

[35 FR 9730, June 13, 1970]

PART 3620—FREE USE

Subpart 3620—Free Use; General

Sec.
3620.0-3 Authority.

Subpart 3621—Free Use of Mineral Materials

3621.1 General.
3621.2 Permits to governmental units.
3621.3 Permits to non-profit organizations.
3621.4 Removal of materials and improvements.

Subpart 3622—Free Use of Petrified Wood

3622.0-3 Authority; Free use of petrified wood by individuals.
3622.1 Program; General.
3622.2 Procedures; Permits.
3622.3 Designation of areas.
3622.4 Collection rules.

Subpart 3620—Free Use; General

§ 3620.0-3 Authority.

Free use of mineral materials in general. Reference § 3600.0-3 for full citation of authority for free use disposal of mineral materials.

[35 FR 9730, June 13, 1970]

Subpart 3621—Free Use of Mineral Materials

SOURCE: 35 FR 9730, June 13, 1970, unless otherwise noted.

§ 3621.1 General.

(a) *Applications.* An application for permit, in duplicate, must be made on Bureau approved forms and filed in any office or with any employee of the Bureau of Land Management authorized to issue a permit.

(b) *Term.* Permits shall be granted for periods not to exceed one year and shall terminate on the expiration dates shown therein unless extended by the authorized officer, such extension not to exceed one year. However, the authorized officer may grant permits to any Federal, State, or Territorial agency, unit, or subdivision including municipalities, for such periods as he may deem appropriate, not to exceed 10 years. The permittee must notify the officer in charge upon completion of removal.

(c) *Assignment.* A free-use permit issued under this section may not be assigned.

(d) *Conditions.* A free-use permit, on a form approved by the Director, shall incorporate the provisions, if any, governing the selection, removal, and use of the mineral materials. Free-use permits shall not be issued where the applicant owns or controls an adequate supply of the mineral materials to meet his needs. The material applied for must be for the applicant's own use and may not be bartered or sold. No mineral materials shall be removed until the permit is issued.

(e) *Bond.* A bond satisfactory to the authorized officer may be required as a guarantee of faithful performance of the provisions of the permit and applicable regulations.

(f) *Cancellation.* The authorized officer may cancel a permit if the permittee fails to observe its terms and conditions, or if the permit has been issued erroneously.

§ 3621.2 Permits to governmental units.

A free-use permit may be issued to any Federal or State agency, unit, or subdivision, including municipalities, without limitation as to the number of permits or as to the value of the mineral materials to be extracted or removed, provided that the applicant makes a satisfactory showing to the authorized officer that such materials will be used for a public project. Such permits will constitute a superior right to remove the materials and will continue in full force and effect, in accordance with its terms and provisions, as against any subsequent claim to or entry of the lands.

§ 3621.3 Permits to non-profit organizations.

A free-use permit issued to a non-profit association or corporation may not provide for the disposition of mineral materials having an in-place value in excess of $100 during any one calendar year. Such permittee is granted a right to remove materials while the permit remains in force and, in accordance with the provisions of the permit, as against a subsequent applicant who may wish to obtain the same mineral material by purchase. However, the mineral materials may not be removed by the permittee after the land has been included in a valid claim by reason of settlement, entry, mining location or similar rights obtained under the public land laws.

§ 3621.4 Removal of materials and improvements.

(a) *Conservation practices.* All mineral materials disposed of under free-use shall be extracted or removed in accordance with approved conservation practices so as to preserve to the maximum extent feasible all scenic, recreational, watershed, and other values of the land and resources.

(b) *Removal by agent.* A free-use permittee may procure the mineral materials by agent. Such agent shall not, however, be paid more than fair compensation for the time, labor, and money expended in procuring the material and processing it, and no charge shall be made for the material itself. No part of the material may be used in payment for services in obtaining or processing it.

(c) *Removal of improvements.* Upon expiration of the permit period the permittee will be given 90 days to remove equipment, personal property, and any improvements he has placed on the land, except roads, culverts, and bridges which are to be left in place and in good condition, and which will become the property of the United States upon expiration of the 90-day removal period.

Subpart 3622—Free Use of Petrified Wood

SOURCE: 35 FR 9730, June 13, 1970, unless otherwise noted.

§ 3622.0-3 Authority; Free use of petrified wood by individuals.

Section 2 of the Act of September 28, 1962 (76 Stat. 652) requires that the Secretary of the Interior shall provide by regulation that limited quantities of petrified wood may be removed without charge from those public lands which he shall specify. Section 2 of said Act applies to the same public lands as the Act of July 31, 1947, as amended (61 Stat. 681). Specifically excluded are lands in any national park, or national monument, or any Indian lands. The Secretary of the Interior has no authority under those statutes over lands under the jurisdiction of the Secretary of Agriculture.

§ 3622.1 Program: General.

To implement the policy of Congress, these regulations have been issued, authorizing the collection for noncommercial purposes of limited quantities of petrified wood by amateur collectors and by scientists, under terms and conditions which will be consistent with preservation of significant deposits as a public recreational resource for the enjoyment of the general public, maintenance of a source of materials for private and public collections, maintenance for the general public of areas for the pleasure of hunting for petrified wood specimens, and protection of other resources and projects on the lands. Subpart 3610 provides for purchase of petrified wood for commercial purposes.

§ 3622.2 Procedures: Permits.

No application or permit for free use is required except for specimens over 250 pounds in weight. Permits to individuals for the removal of such specimens which the applicant certifies will be displayed to the public in a museum or similar institution may be issued by the authorized officer under the terms of Subpart 3621.

§ 3622.3 Designation of areas.

(a) All public lands administered by the Bureaus of Land Management and Reclamation, except those public lands at constructed Reclamation reservoirs, within the Department of the Interior are open for free use removal of petrified wood with the exception of specific areas which may be closed to such collections by public notice or are otherwise closed to public entry. Free use areas under the jurisdiction of said Bureaus may be modified or canceled by notices published in the FEDERAL REGISTER.

(b) The heads of other Bureaus in the Department of the Interior, or their delegates, may publish in the FEDERAL REGISTER designations, modifications, or cancellations of free use areas on lands under their jurisdiction.

(c) The Secretary of the Interior, or his delegate, may designate, modify, or cancel free use areas on public lands which are under the jurisdiction of other Federal departments or agencies other than the Department of Agriculture with the consent of the head of such other Federal department or agency concerned, upon publication of notice in the FEDERAL REGISTER.

(d) This section does not apply to lands under the jurisdiction of the Secretary of Agriculture.

§ 3622.4 Collection rules.

(a) *General.* The following rules shall govern the removal without charge of specimens from public lands administered by the Department of the Interior:

(1) The maximum quantity of petrified wood that any one person is allowed to remove without charge per day is 25 pounds in weight plus one piece, provided that the maximum total amount that one person may remove in one calendar year shall not exceed 250 pounds. Pooling of quotas to obtain pieces larger than 250 pounds is not allowed.

(2) Except for the removal of museum pieces under permit issued pursuant to Subpart 3621, no explosives and no power equipment, including but not limited to tractors, bulldozers, plows, powershovels, trucks or semi-trailers, may be used for the excavation or removal of petrified wood obtained under the free use privilege. However, light trucks, up to one ton capacity, used in connection with campers or trailers or as a principal means of transportation, may be used for hauling purposes.

(3) Petrified wood obtained under this section must be for personal use and may not be bartered or sold to commercial dealers.

(4) Collection of specimens under the authority of this act must be accomplished in a manner that avoids unnecessary soil erosion or needless damage to the land or resources.

(b) *Additional rules.* The head of the Bureau having jurisdiction over a free use area, or his delegate, may establish and publish additional rules for the free use of petrified wood for noncommercial purposes, to supplement those included in paragraph (a) of this section.

Group 3700—Multiple Use; Mining

PART 3710—PUBLIC LAW 167; ACT OF JULY 23, 1955

Subpart 3710—Public Law 167; Act of July 23, 1955; General

Sec.
3710.0-3 Authority.

Subpart 3711—Common Varieties

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3712.2 Publication of notice.
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Subpart 3713—Hearings

3713.1 Hearing: procedures.
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Subpart 3714—Rights of Mining Claimants

3714.1 Recording by mining claimant of request for copy of notice.
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3714.3 Protection of existing rights; exclusion of reservation in patents.

Subpart 3710—Public Law 167; Act of July 23, 1955; General

§ 3710.0-3 Authority.

The Act of July 23, 1955 (69 Stat. 367, 30 U.S.C. sec. 601), was enacted "to amend the Act of July 31, 1947 (61 Stat. 681) and the mining laws to provide for multiple use of the surface of the same tracts of the public lands, and for other purposes." The regulations in this part are intended to implement only sections 3 to 7, inclusive, of said act hereinafter more fully identified. The word "Act" when used in this subpart refers to the Act of July 23, 1955. Sections 1 and 2 thereof relate specifically to the Materials Act of July 31, 1947.

[35 FR 9731, June 13, 1970]

Subpart 3711—Common Varieties

§ 3711.1 Provisions of act.

(a) The Act in section 3 provides: A deposit of common varieties of sand, stone, gravel, pumice, pumicite or cinders shall not be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws: *Provided, however,* That nothing herein shall affect the validity of any mining location based upon discovery of some other mineral occurring in or in association with such a deposit. "Common varieties" as used in this act does not include deposits of such materials which are valuable because the deposit has some property giving it distinct and special value and does not include so-called "block pumice" which occurs in nature in pieces having one dimension of two inches or more.

(b) "Common varieties" includes deposits which, although they may have value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts, do not possess a distinct, special economic value for such use over and above the normal uses of the general run of such deposits. Mineral materials which occur commonly shall not be deemed to be "common varieties" if a particular deposit has distinct and special properties making it commercially valuable for use in a manufacturing, industrial, or processing operation. In the determination of commercial value, such factors may be considered as quality and quantity of the deposit, geographical location, proximity to market or point of utilization, accessibility to transportation, requirements for reasonable reserves consistent with usual industry practices to serve existing or proposed manufacturing, industrial, or processing facilities, and feasible methods for mining and removal of the material. Limestone suitable for use in the production of cement, metallurgical or chemical grade limestone, gypsum, and the like are not "common varieties." This subsection does not relieve a claimant from any requirements of the mining laws.

[35 FR 9731, June 13, 1970]

Subpart 3712—Proceedings Under the Act

SOURCE: 35 FR 9732, June. 13, 1970, unless otherwise noted.

§ 3712.1 Restriction on use of unpatented mining claims.

(a) The Act in section 4 provides:

> Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto.
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> Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States). Any such mining claim shall also be subject, prior to issuance of patent therefor, to the right of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land: *Provided, however*, That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto: *Provided further*, That if at any time the locator requires more timber for his mining operations than is available to him from the claim after disposition of timber therefrom by the United States, subsequent to the location of the claim, he shall be entitled, free of charge, to be supplied with timber for such requirements from the nearest timber administered by the disposing agency which is ready for harvesting under the rules and regulations of that agency and which is substantially equivalent in kind and quantity to the timber estimated by the disposing agency to have been disposed of from the claim: *Provided, further*, That nothing in this act shall be construed as affecting or intended to affect or in any way interfere with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian relating to the ownership, control, appropriation, use, and distribution of ground or surface waters within any unpatented mining claim.
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> Except to the extent required for the mining claimant's prospecting, mining or processing operations and uses reasonably incident thereto, or for the construction of buildings or structures in connection therewith, or to provide clearance for such operations or uses, or to the extent authorized by the United States, no claimant of any mining claim hereafter located under the mining laws of the United States shall, prior to issuance of patent therefor, sever, remove, or use any vegetative or other surface resources thereof which are subject to management or disposition by the United States under the preceding subsection (b). Any severance or removal of timber which is permitted under the exceptions of the preceding sentence, other than severance or removal to provide clearance, shall be in accordance with sound principles of forest management.

(b) The locator of an unpatented mining claim subject to the Act is limited in his use of the claim to those uses specified in the act, namely prospecting, mining, or processing operations and uses reasonably incident thereto. He is forbidden to use it for any other purpose such, for example, as for filling stations, curio shops, cafes, tourist, or fishing and hunting camps. Except as such interference may result from uses permitted under the act, the locator of an unpatented mining claim subject to the act may not interfere with the right of the United States to manage the vegetative and other surface resources of the land, or use it so as to block access to or egress from adjacent public land, or use Federal timber for purposes other than those permitted under the act, or block access to water needed in grazing use of the national forests or other public lands, or block access to recreational areas, or prevent agents of the Federal Government from crossing the locator's claim in order to reach adjacent land for purposes of managing wild-game habitat or improving fishing streams so as to thwart the public harvest and proper management of fish and game resources on the public lands generally, both on located and on adjacent lands.

(c) Mining claims located prior to the date of the act will be subject to the Act where determination has been made pursuant to section 5 of the Act, that the locator's surface rights are limited as provided in section 4 of the Act, or where the owners have waived and relinquished all rights under section 6 of the Act, which are contrary to or in conflict with the limitations and restrictions specified as to hereafter located unpatented mining claims in section 4 of the Act. See § 3714.3 as to effect on existing rights.

(d) On mining claims subject to the provisions of the Act, timber may be used by the claimants only for the purposes permitted under the Act, and, except where timber is removed to provide clearance for operations or uses permitted under the Act, such timber must be cut in accordance with sound principles of forest management. When timber on a mining claim is disposed of by the Government subsequent to the location of the claim, free use of timber by the mining claimant of like kind and quantity from the nearest timber administered by the disposing agency is provided for, but only when and to the extent that is required for their mining operations and only in kind and quantity substantially equivalent to the timber removed from the claim by the Government. Any such timber may be cut and removed only under the rules and regulations of the administering agency. Regulations governing applications and issuance of permits for the use of such timber on public lands administered by the Bureau of Land Management are contained in Part 5510 of this chapter.

§ 3712.2 Publication of notice.

§ 3712.2-1 Request for publication of notice to mining claimant.

(a) The Act in the first paragraph of section 5(a) provides as follows:

> The head of a Federal department or agency which has the responsibility for administering surface resources of any lands belonging to the United States may file as to such lands in the office of the Secretary of the Interior, or in such office as the Secretary of the Interior may designate, a request for publication of notice to mining claimants, for determination of surface rights, which request shall contain a description of the lands covered thereby, showing the section or sections of the public land surveys which embrace the lands covered by such request, or if such lands are unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.

The "request for publication of notice to mining claimants" authorized to be filed by the above-quoted portion of the act can be filed by the Federal department or agency which has the responsibility for administering surface resources of the lands to which the requested notice would relate. It must describe the land covered by the request by section, township, range, and meridian or, if the land is unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands, or by a metes and bounds description of such area with a tie to a United States mineral monument.

(b) A request for publication of notice under this subsection shall be filed with the proper office of the Bureau of Land Management. No request for publication may include lands in more than one district.

§ 3712.2-2 Evidence necessary to support a request for publication.

(a) The second and third paragraphs of section 5(a) of the Act provide in detail for the filing by the head of a Federal department or agency of certain evidence in support of the request for publication of the notice referred to in § 3712.2-1 as follows:

> The filing of such request for publication shall be accompanied by an affidavit or affidavits of a person or persons over twenty-one years of age setting forth that the affiant or affiants have examined the lands involved in a reasonable effort to ascertain whether any person or persons were in actual possession of or engaged in the working of such lands or any part thereof, and, if no person or persons were found to be in actual possession of or engaged in the working of said lands or any part thereof, on the date of such examination, setting forth such fact, or, if any person or persons were so

found to be in actual possession or engaged in such working on the date of such examination, setting forth the name and address of each such person, unless affiant shall have been unable through reasonable inquiry to obtain information as to the name and address of any such person, in which event the affidavit shall set forth fully the nature and results of such inquiry.

The filing of such request for publication shall also be accompanied by the certificate of a title or abstract company, or of a title abstractor, or of an attorney, based upon such company's abstractor's or attorney's examination of those instruments which are shown by the tract indexes in the county office of record as affecting the lands described in said request, setting forth the name of any person disclosed by said instruments to have an interest in said lands under any unpatented mining claim heretofore located, together with the address of such person if such address is disclosed by such instruments of record. "Tract indexes" as used herein shall mean those indexes, if any, as to surveyed lands identifying instruments as affecting a particular legal subdivision of the public land surveys, and as to unsurveyed lands identifying instruments as affecting a particular probable legal subdivision according to a projected extension of the public land surveys.

(b) This part of the Act requires the filing of an affidavit which may be made by any person or persons over twenty-one years of age who have examined the lands. It must show whether any person or persons were "in actual possession of or engaged in the working of such lands (the lands described in the request for publication of notice) or any part thereof" and, if they were, the name and address of each such person must be given if it can be learned by reasonable inquiry and if it cannot be so learned, the affidavit must show in detail what inquiry or inquiries were made to obtain each such name and address. No definition of the terms "in actual possession" or "engaged in the working of said lands" will be attempted here, but the affidavits should recite what evidences of occupancy or workings were found. The request for publication must also be accompanied by a certificate executed as provided in the third paragraph of section 5(a) and containing the information required by that paragraph to be furnished. If there are no tract indexes, as defined in the Act, in the county office of record affecting the lands described in the request for publication, a certificate executed as provided in the said third paragraph of section 5(a) to that effect must be furnished.

§ 3712.2-3 Contents of published notice.

Section 5(a) of the Act specifies in detail what the published notice shall contain, as follows:

> Such notice shall describe the lands covered by such request, as provided heretofore, and shall notify whomever it may concern that if any person claiming or asserting under, or by virtue of, any unpatented mining claim heretofore located, rights as to such lands or any part thereof, shall fail to file in the office where such request for publication was filed (which office shall be specified in such notice) and within one hundred and fifty days from the date of the first publication of such notice (which date shall be specified in such notice), a verified statement which shall set forth, as to such unpatented mining claim—
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> (1) The date of location;
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> (2) The book and page of recordation of the notice or certificate of location;
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> (3) The section or sections of the public land surveys which embrace such mining claims; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;
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> (4) Whether such claimant is a locator or purchaser under such location; and
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> (5) The name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim; such failure shall be conclusively deemed (i) to constitute a waiver and relinquishment by such mining claimant of any right, title or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this act as to hereafter located unpatented mining claims, and (ii) to constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, shall be subject to the limitations and restrictions specified in section 4 of this act as to hereafter located unpatented mining claims, and (iii) to preclude thereafter, prior to issuance of patent, any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of this act

as to hereafter located unpatented mining claims.

§ 3712.2-4 Publication.

If the request for publication and the accompanying papers conform to the requirements of the Act, the Authorized officer or the Director, as may be appropriate, at the expense of the requesting department or agency, shall cause notice to mining claimants to be published in a newspaper having general circulation in the county in which the lands involved are situated. If the notice is published in a daily newspaper it shall be published in the Wednesday issue for nine consecutive weeks, if in a weekly paper, in nine consecutive issues, or if in a semi-weekly or tri-weekly paper, in the issue of the same day of each week for nine consecutive weeks.

§ 3712.2-5 Proof of publication.

After the period of newspaper publication has expired, the department or agency requesting the publication shall obtain from the office of the newspaper or publication a sworn statement that the notice was published at the time and in accordance with the requirements under the regulations of this part, and shall file such sworn statement in the office where the Request for Publication was filed.

§ 3712.2-6 Service of notice.

The last paragraph of section 5(a) of the Act provides with respect to service of the notice by personal delivery or by registered mail, as follows:

> Within fifteen days after the date of first publication of such notice, the department or agency requesting such publication (1) shall cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person in possession or engaged in the working of the land whose name and address is shown by an affidavit filed as aforesaid, and to each person who may have filed, as to any lands described in said notice, a request for notices, as provided in subsection (d) of this section 5, and shall cause a copy of such notice to be mailed by registered mail to each person whose name and address is set forth in the title or abstract company's or title abstractor's or attorney's certificate filed as aforesaid, as having an interest in the lands described in said notice under any unpatented mining claim heretofore located, such notice to be directed to such person's address as set forth in such certificate; and (2) shall file in the office where said request for publication was filed an affidavit showing that copies have been so delivered or mailed.

§ 3712.2-7 Service of copies; failure to comply.

If the department or agency requesting publication under these regulations shall fail to comply with the requirements of section 5(a) of the Act as to the personal delivery or mailing of a copy of the published notice to any person, the publication of such notice shall be deemed wholly ineffectual as to that person or as to the rights asserted by that person and the failure of that person to file a verified statement, as provided in such notice shall in no manner affect, diminish, prejudice or bar any rights of that person.

§ 3712.3 Failure of claimant to file verified statement.

If any claimant under any unpatented mining claim located prior to July 23, 1955, which embraces any of the lands described in any notice published in accordance with the regulations in this part shall fail to file a verified statement, as specified in such published notice (See § 3712.2-4), within one hundred and fifty days from the date of the first publication of such notice, such failure shall be conclusively deemed except as otherwise provided in § 3712.2-7.

(a) To constitute a waiver and relinquishment by such mining claimant of any right, title or interest under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of the Act as to unpatented mining claims located after its enactment.

(b) To constitute a consent by such mining claimant that such mining claim, prior to issuance of patent therefor, be subject to the limitations and restrictions specified in section 4 of the Act as to unpatented mining claims located after its enactment.

(c) To preclude thereafter prior to the issuance of patent any assertion by such mining claimant of any right or title to or interest in or under such mining claim contrary to or in conflict with the limitations or restrictions specified in section 4 of the Act as to unpatented mining claims located after its enactment.

Subpart 3713—Hearings

SOURCE: 35 FR 9734, June 13, 1970, unless otherwise noted.

§ 3713.1 Hearing: procedures.

The procedures with respect to notice of such a hearing and the conduct thereof, and in respect to appeals, shall follow the appeals and contests of the Department of the Interior and the Bureau of Land Management (Part 1850 of this title) relating to contests or protests affecting public lands of the United States so far as they are applicable.

§ 3713.2 Hearing: time and place.

If any verified statement shall be filed by a mining claimant then the administrative law judge or the Director, as may be appropriate, shall fix a time and place for a hearing to determine the validity and effectiveness of any right or title to or interest in or under such mining claim which the mining claimant may assert contrary to or in conflict with the limitations or restrictions specified in section 4 of the Act as to unpatented mining claims located after its enactment. The administrative law judge shall notify the department or agency and all mining claimants entitled to notice as the result of the filing of such verified statement of the time and place of such hearing at least 30 days in advance thereof. The notice of hearing shall contain a statement specifying the issues upon which evidence will be submitted at the hearing. Such hearing shall be held in the county where the lands in question, or parts thereof, are located unless the mining claimant agrees otherwise.

§ 3713.3 Stipulation between parties.

Where verified statements are filed asserting rights to an aggregate of more than twenty mining claims, any single hearing shall be limited to a maximum of twenty mining claims unless the parties affected shall otherwise stipulate and as many separate hearings shall be set as shall be necessary to comply with section 5(c) of the Act. If at any time prior to a hearing the department or agency requesting publication of notice and any person filing a verified statement pursuant to such notice shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by the notice published pursuant to that request.

§ 3713.4 Effect of decision affirming a mining claimant's rights.

(a) If the final decision rendered in any hearing held pursuant to section 5 of the act shall affirm the validity and effectiveness of any mining claimant's right or interest under a mining claim asserted in accordance with the provisions of that section, then no subsequent proceedings under section 5 of the act shall have any force or effect upon the so-affirmed right or interest of such mining claimant under such mining claim.

(b) If it is finally determined as the result of such a hearing that the claimant has no right or title to or interest in or under his mining claim which he may assert contrary to or in conflict with the limitations and restrictions specified in section 4 of the act, then those limitations and restrictions shall apply with respect to such mining claim.

Subpart 3714—Rights of Mining Claimants

SOURCE: 35 FR 9734, June 13, 1970, unless otherwise noted.

§ 3714.1 Recording by mining claimant of request for copy of notice.

Section 5(d) of the Act provides as follows:

> Any person claiming any right under or by virtue of any unpatented mining claim heretofore located and desiring to receive a copy of any notice to mining claimants which may be published as above provided

in subsection (a) of this section 5, and which may affect lands embraced in such mining claim, may cause to be filed for record in the county office of record where the notice of certificate of location of such mining claim shall have been recorded, a duly acknowledged request for a copy of any such notice. Such request for copies shall set forth the name and address of the person requesting copies, and shall also set forth, as to each heretofore located unpatented mining claim under which such person asserts rights—

(1) The date of location;

(2) The book and page of the recordation of the notice or certificate of location; and

(3) The section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument. Other than in respect to the requirements of subsection (a) of this section 5 as to personal delivery or mailing of copies of notices and in respect to the provisions of subsection (e) of this section 5, no such request for copies of published notices and no statement or allegation in such request and no recordation thereof shall affect title to any mining claim or to any land or be deemed to constitute constructive notice to any person that the person requesting copies has, or claims, any right, title, or interest in or under any mining claim referred to in such request.

§ 3714.2 Waiver of rights by mining claimants.

Section 6 of the Act provides as follows:

> The owner or owners of any unpatented mining claim heretofore located may waive and relinquish all rights thereunder which are contrary to or in conflict with the limitations or restrictions specified in section 4 of this act as to hereafter located unpatented mining claims. The execution and acknowledgement of such a waiver and relinquishment by such owner or owners and the recordation thereof in the office where the notice or certificate of location of such mining claim is of record shall render such mining claim thereafter and prior to issuance of patent subject to the limitations and restrictions in section 4 of this act in all respects as if said mining claim had been located after enactment of this act, but no such waiver or relinquishment shall be deemed in any manner to constitute any concession as to the date of priority of rights under said mining claim or as to the validity thereof.

§ 3714.3 Protection of existing rights; exclusion of reservation in patents.

The Act in section 7 provides as follows:

> Nothing in this act shall be construed in any manner to limit or restrict or to authorize the limitation or restriction of any existing rights of any claimant under any valid mining claim heretofore located, except as such rights may be limited or restricted as a result of a proceeding pursuant to section 5 of this act, or as a result of a waiver and relinquishment pursuant to section 6 of this act; and nothing in this act shall be construed in any manner to authorize inclusion in any patent hereafter issued under the mining laws of the United States for any mining claim heretofore or hereafter located, of any reservation, limitation, or restriction nct otherwise authorized by law, or to limit or repeal any existing authority to include any reservation, limitation, or restriction in any such patent, or to limit or restrict any use of the lands covered by any patented or unpatented mining claim by the United States, its lessees, permittees, and licensees which is otherwise authorized by law.

This section makes it clear that all of the rights of mining claimants existing on the date of the Act are preserved and will continue unless: (a) Claimant fails, subject, however, to the provisions of § 3712.2-7, to file a verified statement in response to a published notice as provided in section 5(b) of the Act and § 3712.2-9; (b) it is determined as a result of a hearing pursuant to section 5(c) that such rights asserted in a verified statement are not valid and effective; (c) the claimant waives and relinquishes his rights pursuant to section 6. It also preserves to all mining claimants the right to a patent unrestricted by anything in the Act and provides that no limitation, reservation or restriction may be inserted in any mineral patent unless authorized by law, but it also makes it clear that all laws in force on the date of its enactment which provide for any such reservation, limitation, or restriction in such patents and all authority of law then existing for the use of lands embraced in unpatented mining claims by the United States, its lessees, permittees, and licensees continue in full force and effect.

PART 3720—PUBLIC LAW 357; ENTRY AND LOCATION OF SOURCE MATERIAL UPON PUBLIC LANDS VALUABLE FOR COAL

Subpart 3722—Report to Geological Survey

§ 3722.1 Annual report and payment requirements.

(a) The Act in section 1 provides in part as follows:

> That the claimant to any such mining location shall report annually to the Mining Supervisor of the Geological Survey the amount of lignite mined or stripped in the recovery of such valuable source material during each calendar year and tender payment to him of 10 cents per ton thereon * * * subject to the recording and payment requirements * * *

(b) Payments shall be by check, draft or money order, payable to the United States Geological Survey, accompanied by a report of the tons of lignite mined or stripped, whether disposed of or not in recovering the source material. Each report should show the name of the claim, identify the location, the calendar year for which payment is made and address of claimant.

(c) Tonnage reports and remittances for claims in Montana, North Dakota, South Dakota, and Northern Wyoming should be sent to the Regional Mining Supervisor, U.S. Geological Survey, Billings, Montana. As to claims in other states, the address of the Regional Mining Supervisor may be obtained from the Director, U.S. Geological Survey, Washington, D.C. 20244.

[35 FR 9735, June 13, 1970]

PART 3730—PUBLIC LAW 359; MINING IN POWERSITE WITHDRAWALS; GENERAL

Subpart 3730—Public Law 359; Mining in Powersite Withdrawals; General

Sec.
3730.0-1 Purpose.
3730.0-3 Authority; lands opened.

Subpart 3731—Power Rights

Sec.
3731.1 Power rights retained in the United States.

Subpart 3732—Withdrawals Other Than for Powersite Purposes

3732.1 Act ineffective as to other withdrawals.

Subpart 3733—Risk of Operation

3733.1 Financial risk of operation.
3733.2 Liability of United States.

Subpart 3734—Location and Assessment Work

3734.1 Owner of claim to file notice of location and assessment work.

Subpart 3735—Prior Existing Mining Locations

3735.1 No limitation or restriction of rights under valid claims located prior to withdrawal.
3735.2 No limitation of rights where claimant in diligent prosecution of work when future withdrawals made.

Subpart 3736—Mining Operations

3736.1 Placer locator to conduct no mining operations for 60 days.
3736.2 Hearing; notice of protest.

Subpart 3737—Use

3737.1 Mining claim and millsite use.

Subpart 3738—Surface Protection Requirements

3738.1 Bond or deposit required.
3738.2 Restoration of surface condition.

Subpart 3730—Public Law 359; Mining in Powersite Withdrawals; General

§ 3730.0-1 Purpose.

The Act of August 11, 1955 (69 Stat. 681), was enacted "To permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development, and for other purposes". The regulations in this part are intended to implement those parts of the act which require action by the Department of the Interior. The expression "Act" shall mean the Act of August 11, 1955 (69 Stat. 681), cited in the Act as the "Mining Claims Rights Restoration Act of 1955".

[35 FR 9736, June 13, 1970]

§ 3730.0-3 Authority; lands opened.

(a) The Act in section 2 provides in part as follows:

All public lands belonging to the United States heretofore, now or hereafter withdrawn or reserved for power development or power sites shall be open to entry for location and patent of mining claims and for mining, development, beneficiation, removal, and utilization of the mineral resources of such lands under applicable Federal statutes: * * * that nothing contained herein shall be construed to open for the purposes described in this section any lands (1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other act of Congress, or (2) which are under examination and survey by a prospective licensee of the Federal Power Commission, if such prospective licensee holds an uncanceled preliminary permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to such lands and such permit has not been renewed in the case of such prospective licensee more than once.

(b) The Act in the second proviso thereof provides:

That locations made under the act within the revested Oregon and California Railroad and reconveyed Coos Bay Wagon grant lands shall also be subject to the provisions of the Act of April 8, 1948 (62 Stat. 162).

[35 FR 9736, June 13, 1970]

Subpart 3731—Power Rights

§ 3731.1 Power rights retained in the United States.

(a) The Act in the first proviso provides as follows:

That all power rights to such lands shall be retained by the United States.

(1) Under this proviso every patent issued for such a location must contain a reservation unto the United States, its permittees or licensees of the right to enter upon, occupy and use, any part of the lands for power purposes without any claim or right to compensation accruing to the locator or successor in interest from the occupation or use of any of the lands within the location, for such purposes. Furthermore, the patent will contain a provision that the United States, its permittees and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any mining claim, mill site, facility installed or erected, income, or other property or investments resulting from the actual use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States, except where such damage, destruction, or loss results from the negligence of the United States, its permittees and licensees.

[35 FR 9736, June 13, 1970]

Subpart 3732—Withdrawals Other Than for Powersite Purposes

§ 3732.1 Act ineffective as to other withdrawals.

(a) The Act in section 2(c) provides as follows:

Nothing in this act shall affect the validity of withdrawals or reservations for purposes other than power development.

(b) If the power site lands are also affected by any other type of withdrawal which prevents mining location in whole or in part, the provisions of the Act apply only to the extent that the lands are otherwise open to location.

[35 FR 9737, June 13, 1970]

Subpart 3733—Risk of Operation

§ 3733.1 Financial risk of operation.

The Act in section 3 provides in part as follows:

Prospecting and exploration for and the development and utilization of mineral resources authorized in this act shall be entered into or continued at the financial risk of the individual party or parties undertaking such work.

[35 FR 9737, June 13, 1970]

§ 3733.2 Liability of United States.

The Act in section 3 provides in part as follows:

> *Provided*. That the United States, its permittees and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any mining claim, mill site, facility installed or erected, income, or other property or investments resulting from the actual use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States, except where such damage, destruction, or loss results from the negligence of the United States, its permittees and licensees.

[35 FR 9737, June 13, 1970]

Subpart 3734—Location and Assessment Work

§ 3734.1 Owner of claim to file notice of location and assessment work.

(a) The Act in section 4 provides as follows:

> The owner of any unpatented mining claim located on land described in section 2 of this act shall file for record in the United States district land office of the land district in which the claim is situated (1) within one year after the effective date of this act, as to any or all locations heretofore made, or within sixty days of location as to locations hereafter made, a copy of the notice of location of the claim; (2) within sixty days after the expiration of any annual assessment year, a statement as to any work done or improvements made during the previous assessment year.

(b) Neither section 4 nor any other provision of the Act validates any mining location made prior to the act, which is invalid because made on lands after they were withdrawn or reserved for power purposes and before a favorable determination by the Federal Power Commission under section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1063; 1075), as amended (16 U.S.C. 792; 818) and the opening or restoration of the lands to location. Section 4 applies to unpatented locations for lands referred to in § 3730.0-3(a) only if:

(1) The location was made on or after August 11, 1955, or

(2) The location was made prior to August 11, 1955, and prior to the withdrawal or reservation of the lands for power purposes, or

(3) The location was made prior to August 11, 1955, on lands restored to location from a powersite reserve or withdrawal subject to section 24 of the Federal Power Act.

(c) The owner of an unpatented location coming under paragraph (b)(1) of this section, within sixty days from the date of location shall file in the proper office, a copy of the notice or certificate of location and within sixty days after the expiration of each assessment year, a statement as to the assessment work done or improvements made during that assessment year. For identification purposes only, the copy of the location notice or certificate, filed in the land office under this subsection, should contain a notation that it was filed under the Act of August 11, 1955.

(d) The owner of an unpatented location coming under either paragraph (b) (2) or (3) of this section, before August 11, 1955 shall have filed in the proper office a copy of the notice or certificate of location and within 60 days from the date of expiration of the assessment year which ended upon July 1, 1956 and within 60 days from the date of expiration of each succeeding assessment year, shall file a statement as to the assessment work done or improvements made during the previous assessment year.

[35 FR 9737, June 13, 1970]

Subpart 3735—Prior Existing Mining Locations

§ 3735.1 No limitation or restriction of rights under valid claims located prior to withdrawal.

(a) The Act in section 5 provides:

> Nothing in this act contained shall be construed to limit or restrict the rights of the owner or owners of any valid mining claim located prior to the date of withdrawal or reservation: *Provided*. That nothing in this act shall be construed to limit or restrict the rights of the owner or owners of any mining claim who are diligently working to make a discovery of valuable minerals at the time any future withdrawal or reservation for power development is made.

(b) Although the Act does not limit or restrict the rights of owners of locations to which section 5 refers, such owners shall comply with section 4 by making the filings required either by paragraph (c) or (d) of § 3734.1 whichever is applicable.

[35 FR 9737, June 13, 1970]

§ 3735.2 No limitation of rights where claimant in diligent prosecution of work when future withdrawals made.

(a) Under section 5 of the Act the rights to a location made prior to any future withdrawal or reservation for power development or one on which the locator was diligently working to make a discovery of valuable minerals are not limited or restricted.

[35 FR 9737, June 13, 1970]

Subpart 3736—Mining Operations

§ 3736.1 Placer locator to conduct no mining operations for 60 days.

(a) The Act in section 2(b) provides in part as follows:

> The locator of a placer claim under this Act, however, shall conduct no mining operations for a period of sixty days after the filing of a notice of location pursuant to section 4 of this Act. If the Secretary of the Interior, within sixty days from the filing of the notice of location, notifies the locator by registered mail of the Secretary's intention to hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land included within the placer claim, mining operations on that claim shall be further suspended until the Secretary has held the hearing and has issued an appropriate order. The order issued by the Secretary of the Interior shall provide for one of the following: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator shall, following placer operations, restore the surface of the claim to the condition in which it was immediately prior to those operations, or (3) a general permission to engage in placer mining. No order by the Secretary with respect to such operations shall be valid unless a certified copy is filed in the same State or county office in which the locator's notice of location has been filed, in compliance with the United States mining laws.

(b) Upon receipt of a notice of location of a placer claim filed in accordance with § 3734.1 for land subject to location under the act, a determination will be made by the authorized officer of the Bureau of Land Management as to whether placer mining operations on the land may substantially interfere with other uses thereof. If it is determined that placer operations may substantially interfere with other uses, a notice of intention to hold a hearing will be sent to each of the locators by registered or certified mail within 60 days from date of filing of the location notice.

[35 FR 9737, June 13, 1970]

§ 3736.2 Hearing; notice of protest.

(a) If a hearing is to be held, notice of the hearing will be delivered personally or by registered mail or certified mail to the locator of the placer claim. The notice will indicate the time and place of hearing. The procedures with respect to service of notice of hearing and conduct thereof shall follow the provisions of appeals and contests of the Department of the Interior (Part 1850 of this title) in effect at the time the hearing is held. No publication of the notice will be required but a copy thereof shall be posted in the proper office of the Bureau of Land Management for a period of not less than 30 days prior to the date set for the hearing. The manager shall give such publicity to the hearing as may be done without expense to the Government.

(b) Any party, other than a Federal agency, desiring to appear and testify at a hearing in protest to placer mining operations must file a written notice of protest in the proper office wherein the notice of hearing is posted. Such notice, accompanied by a $10 filing fee, must contain the party's name and address and a statement showing the nature of the party's interest in the use of the lands embraced within the mining claim. Each notice of protest must be filed within the period of time specified in the notice of hearing. The authorized officer shall forward a copy of each such notice that is filed to the mining locator prior to the hearing.

(c) Following the hearing, the administrative law judge will render a decision, subject to the right of appeal by any person admitted as a party to the hearing in accordance with the provisions of appeals and contests of the Department of the Interior (Part

1850 of this title). Each decision by an administrative lay judge, or upon appeal, shall provide for the issuance of an appropriate order as provided in section 2(b) of the Act; but no such order shall issue until the decision, upon which it is based, becomes final. A certified copy of any order issued shall be filed in the same State or county office in which the location notice has been filed. Any such order permitting mining operations shall be filed at the expense of the mining locator.

[35 FR 9737, June 13, 1970]

Subpart 3737—Use

§ 3737.1 Mining claim and millsite use.

(a) The Act in section 6 provides as follows:

> Notwithstanding any other provisions of this act, all mining claims and mill sites or mineral rights located under the terms of this act or otherwise contained on the public lands as described in section 2 shall be used only for the purposes specified in section 2 and no facility or activity shall be erected or conducted thereon for other purposes.

(b) Under this section, a mining claim or millsite may not be used for purposes other than for legitimate mining and milling. The claimant, therefore, may not erect on the mining claim any facility or activity such as filling stations, curio shops, cafes, tourist or hunting and fishing lodges, or conduct such businesses thereon.

[35 FR 9738, June 13, 1970]

Subpart 3738—Surface Protection Requirements

§ 3738.1 Bond or deposit required.

Should a limited order be issued under section 2(b)(2) of the Act, the locator is required to furnish a bond in a sum determined by the Administrative law judge. The bond must be either a corporate surety bond or a personal bond accompanied by cash or negotiable Federal securities equal at their par value to the amount of the penal sum of the bond, together with power-of-attorney to the Secretary of the Interior or his delegate.

[35 FR 9738, June 13, 1970]

§ 3738.2 Restoration of surface condition.

If the locator fails or refuses to restore the surface, appropriate action will be taken against him and his surety, including the appropriation of any money deposited on personal bonds, to be used for the purpose of restoring the surface of the claim involved. Any moneys on deposit or received from surety in excess of the amount needed for the restoration of the surface of the particular claim shall be refunded.

[35 FR 9738, June 13, 1970]

PART 3740—PUBLIC LAW 585; MULTIPLE MINERAL DEVELOPMENT

Subpart 3740—Public Law 585, Multiple Mineral Development; General

Sec.
3740.0-1 Purpose.

Subpart 3741—Claims, Locations and Patents

3741.1 Validation of certain mining claims.
3741.2 Preference mining locations.
3741.3 Additional evidence required with application for patent.
3741.4 Reservation to United States of Leasing Act minerals.
3741.5 Mining claims and millsites located on Leasing Act lands after August 13, 1954.
3741.6 Acquisition of Leasing Act minerals in lands covered by mining claims and millsites.

Subpart 3742—Procedures Under the Act

3742.1 Procedure to determine claims to Leasing Act minerals under unpatented mining locations.
3742.2 Recordation of notice of application, offer, permit or lease.
3742.3 Publication of notice.
3742.3-1 Request for publication of notice of Leasing Act filing; supporting instruments.
3742.3-2 Contents of published notice.
3742.3-3 Publication.
3742.3-4 Proof of publication.
3742.3-5 Mailing of copies of published notice.
3742.3-6 Service of copies; failure to comply.

Sec.
3742.4 Failure of mining claimant to file verified statement.

Subpart 3743—Hearings

3743.1 Hearing procedures.
3743.2 Hearing; time and place.
3743.3 Stipulation between parties.
3743.4 Effect of decision affirming a mining claimant's rights.

Subpart 3744—Claimant's Rights

3744.1 Recording by mining claimant of request for copy of notice.
3744.2 Relinquishment by mining claimant of Leasing Act minerals.

Subpart 3745—Helium

3745.1 Helium Reserves Nos. 1 and 2; conditions of opening to mining location and mineral leasing.

Subpart 3746—Fissionable Source Materials

3746.1 Mining locations for fissionable source materials.

Subpart 3740—Public Law 585, Multiple Mineral Development; General

§ 3740.0-1 Purpose.

The Act of August 13, 1954 (68 Stat. 708, 30 U.S.C. 521 et seq.), was enacted "To amend the mineral leasing laws and the mining laws to provide for multiple mineral development of the same tracts of public lands, and for other purposes." The regulations in this part are intended to implement only those sections of said act, hereinafter more fully identified, which require action by the Department of the Interior or its agencies. The expression "Act" when used in this part, means the Act of August 13, 1954 (68 Stat. 708). The expression "Leasing Act", when used in this part, refers to the "mineral leasing laws" as defined in section 11 of the Act of August 13, 1954 (68 Stat 708).

[35 FR 9738, June 13, 1970]

Subpart 3741—Claims Locations and Patents

SOURCE: 35 FR 9738, June 13, 1970, unless otherwise noted.

§ 3741.1 Validation of certain mining claims.

The Act in section 1(a) provides as follows:

> That (a) subject to the conditions and provisions of this act and to any valid intervening rights acquired under the laws of the United States, any mining claim located under the mining laws of the United States subsequent to July 31, 1939, and prior to February 10, 1954, on lands of the United States, which at the time of location were—
>
> (1) Included in a permit or lease issued under the mineral leasing laws; or
>
> (2) Covered by an application or offer for a permit or lease which had been filed under the mineral leasing laws; or
>
> (3) Known to be valuable for minerals subject to disposition under the mineral leasing laws, shall be effective to the same extent in all respects as if such lands at the time of location, and at all times thereafter, had not been so included or covered or known: *Provided, however,* That, in order to be entitled to the benefits of this act, the owner of any such mining claim located prior to January 1, 1953, must have posted and filed for record, within the time allowed by the provisions of the act of August 12, 1953 (67 Stat. 539) [not later than December 10, 1953.] an amended notice of location as to such mining claim, stating that such notice was filed pursuant to the provisions of said act of August 12, 1953, and for the purpose of obtaining the benefits thereof: *And provided further,* That, in order to obtain the benefits of this act, the owner of any such mining claim located subsequent to December 31, 1952, and prior to February 10, 1954, not later than one hundred and twenty days after the date of enactment of this act, must post on such claim in the manner required for posting notice of location of mining claims and file for record in the office where the notice or certificate of location of such claim is of record an amended notice of location for such claim, stating that such notice is filed pursuant to the provisions of this act, and for the purpose of obtaining the benefits thereof and, within said one hundred and twenty day period, if such owner shall have filed a uranium lease application as to the tract covered by such mining claim, must file with the Atomic Energy Commission a withdrawal of such uranium lease application or, if a uranium lease shall have issued pursuant thereto, a release of such lease, and must record a notice of the filing of such withdrawal or release in the county office wherein such notice or certificate of location shall have been filed for record.

§ 3741.2 Preference mining locations.

The Act in section 3(a) and (b) provides as follows:

(a) Subject to the conditions and provisions of this Act and to any valid prior rights acquired under the laws of the United States, the owner of any pending uranium lease application or of any uranium lease shall have, for a period of one hundred and twenty days after the date of enactment of this act, as limited in subsection (b) of this section 3, the right to locate mining claims upon the lands covered by said application or lease.

(b) Any rights under any such mining claim so hereafter located pursuant to the provisions of subsection (a) of this section 3 shall be subject to any rights of the owner of any mining claim which was located prior to February 10, 1954, and which was valid at the date of the enactment of this act or which may acquire validity under the provisions of this act. As to any lands covered by a uranium lease and also by a pending uranium lease application, the right of mining location under this section 3, as between the owner of said lease and the owner of said application, shall be deemed as to such conflict area to be vested in the owner of said lease. As to any lands embraced in more than one such pending uranium lease application, such right of mining location, as between the owners of such conflicting applications, shall be deemed to be vested in the owner of the prior application. Priority of such an application shall be determined by the time of posting on a tract then available for such leasing of a notice of lease application in accordance with paragraph (c) of the Atomic Energy Commission's Domestic Uranium Program Circular 7 (10 CFR 60.7(c)) provided there shall have been timely compliance with the other provisions of said paragraph (c) or, if there shall not have been such timely compliance, then by the time of the filing of the uranium lease application with the Atomic Energy Commission. Any rights under any mining claim located under the provisions of this section 3 shall terminate at the expiration of thirty days after the filing for record of the notice or certificate of location of such mining claim unless, within said 30-day period, the owner of the uranium lease application or uranium lease upon which the location of such mining claim was predicated shall have filed with the Atomic Energy Commission a withdrawal of said application or a release of said lease and shall have recorded a notice of the filing of such withdrawal or release in the county office wherein such notice or certificate of location shall be of record.

§ 3741.3 Additional evidence required with application for patent.

All questions between mining claimants asserting conflicting rights of possession under mining claims, must be adjudicated in the courts. Any applicant for mineral patent, who claims benefits under sections 1 or 3 of this act, or the Act of August 12, 1953, supra, in addition to matters required in Group 3800 of this chapter, must file with his Application for Patent a certified copy of each instrument required to have been recorded as to his mining claim in order to entitle it to such benefits unless an Abstract of Title or Certificate of Title filed with the Application for Patent shall set forth said instruments in full. If a mining claim was located on or after the date of this Act a statement must be filed showing that on the date of location the lands affected were not covered by a uranium lease or an application for a uranium lease. The applicant must also file a copy of the notice required to be posted on the claim and state in his application that such notice was duly posted in accordance with the requirements of the act.

§ 3741.4 Reservation to United States of Leasing Act minerals.

Section 4 of the Act provides that:

Every mining claim or millsite—

(1) Heretofore located under the mining laws of the United States which shall be entitled to benefits under the first three sections of this Act; or

(2) Located under the mining laws of the United States after the effective date of passage of this act, shall be subject, prior to issuance of a patent therefor, to a reservation to the United States of all Leasing Act minerals and of the right (as limited in section 6 hereof) of the United States, its lessees, permittees, and licensees to enter upon the land covered by such mining claim or millsite and to prospect for, drill for, mine, treat, store, transport, and remove Leasing Act minerals and to use so much of the surface and subsurface of such mining claim or millsite as may be necessary for such purposes, and whenever reasonably necessary, for the purpose of prospecting for, drilling for, mining, treating, storing, transporting, and removing Leasing Act minerals on and from other lands; and any patent issued for any such mining claim or millsite shall contain such reservation as to, but only as to,

such lands covered thereby which at the time of the issuance of such patent were—

(a) Included in a permit or lease issued under the mineral leasing laws; or

(b) Covered by an application or offer for a permit or lease filed under the mineral leasing laws; or

(c) Known to be valuable for minerals subject to disposition under the mineral leasing laws.

§ 3741.5 Mining claims and millsites located on Leasing Act lands after August 13, 1954.

Since enactment of the Act on August 13, 1954, and subject to its conditions and provisions, including the reservation of Leasing Act minerals to the United States as provided in section 4, mining claims and millsites may be located under the mining laws of the United States on lands of the United States which at the time of location are—

(a) Included in a permit or lease issued under the mineral leasing laws; or

(b) Covered by an application or offer for a permit or lease filed under the mineral leasing laws; or

(c) Known to be valuable for minerals subject to disposition under the mineral leasing laws: This is inclusive of lands in petroleum reserves, except Naval petroleum reserves;

to the same extent in all respects as if such lands were not so included or covered or known.

§ 3741.6 Acquisition of Leasing Act minerals in lands covered by mining claims and millsites.

The Leasing Act minerals in lands covered by mining claims and millsites located after the date of the act or validated pursuant to the act may be acquired under the mineral leasing laws, upon appropriate application therefor being filed prior to the issuance of patent to such mining claims or millsites, or after the issuance of patent, if the patent contains a reservation of Leasing Act minerals to the United States as provided in section 4 of the act.

Subpart 3742—Procedures Under the Act

SOURCE: 35 FR 9739, June 13, 1970, unless otherwise noted.

§ 3742.1 Procedure to determine claims to Leasing Act minerals under unpatented mining locations.

Section 7 of the act provides a procedure whereby a Leasing Act applicant, offeror, permittee or lessee may have determined the existence and validity of claims to Leasing Act minerals asserted under unpatented mining locations made prior to August 13, 1954, affecting lands embraced within such application, offer, permit or lease. This procedure is described in the succeeding regulations, and involves the prior recording of notice of such application, offer, permit or lease and the filing of a request for publication of notice of the same.

§ 3742.2 Recordation of notice of application, offer, permit or lease.

Not less than 90 days prior to the filing of such request for publication, there must have been filed for record in the county office of record for each county in which lands covered thereby are situated, a notice of the filing of the application or offer, or of the issuance of the permit or lease, upon which said request for publication is based. Such notice must set forth the date of the filing of such application or offer or of the issuance of such permit or lease, the name and address of the applicant, offeror, permittee or lessee, and the description of the lands covered by such application, offer, permit or lease, showing the section or sections of the public land surveys which embrace such lands, or, if such lands are unsurveyed, either the section or sections which would probably embrace such lands when the public land surveys are extended to such lands, or a tie by courses and distances to an approved United States mineral monument.

§ 3742.3 Publication of notice.

§ 3742.3-1 Request for publication of notice of Leasing Act filing; supporting instruments.

(a) Having complied with the requirement of § 3742.2 the applicant, offeror, permittee or lessee may file a Request for Publication of notice of such party's application, offer, permit or lease. Such request for publication shall be filed in the proper office. No Request for Publication, or publication, may include lands in more than one District.

(b) The filing of a Request for Publication must be accompanied by the following:

(1) A certified copy of the Notice of Application, offer, permit or lease setting forth the date of recordation thereof. The date of recordation shall be presumed to have been the date when the notice was filed for record unless the certified copy of the notice shows otherwise or is accompanied by an affidavit of the person filing the request for publication showing that the notice was filed for record on a date prior to the date of recordation.

(2) An affidavit or affidavits of a person or persons over 21 years of age, setting forth that the affiant or affiants have examined the lands involved in a reasonable effort to ascertain whether any person or persons were in actual possession of or engaged in the working of the lands covered by such request or any part thereof. If no person or persons were found to be in actual possession of or engaged in the working of said lands or any part thereof, on the date of such examination, such affidavit or affidavits shall set forth such fact. If any person or persons were so found to be in actual possession or engaged in such working on the date of such examination, such affidavit or affidavits shall set forth the name and address of each such person unless the affiant shall have been unable, through reasonable inquiry, to obtain information as to the name and address of such person; in which event, the affidavit or affidavits shall set forth fully the nature and the results of such inquiry.

(3) The certificate of a title or abstract company, or of a title abstractor, or of an attorney, based upon such company's, abstractor's or attorney's examination of the instruments affecting the lands involved, of record in the public records of the county in which said lands are situate as shown by the indices of the public records in the county office of record for said county, setting forth the name of any person disclosed by said instruments to have an interest in said lands under any unpatented mining claim located prior to enactment of the Act on August 13, 1954, together with the address of such person if disclosed by such instruments of record.

(4) A nonrefundable $10 remittance to cover service charge.

§ 3742.3-2 Contents of published notice.

The notice to be published as required by the preceding section, shall describe the lands covered by the application, offer, permit or lease in the same manner as is required under § 3742.2 Such published notice shall notify whomever it may concern, that if any person claiming or asserting under, or by virtue of, any unpatented mining claim located prior to enactment of the act of August 13, 1954, any right or interest in Leasing Act minerals as to such lands or any part thereof, shall fail to file in the office where such Request for Publication was filed (which office shall be specified in such notice), and within 150 days from the date of the first publication of such notice (which date shall be specified in such notice), a verified statement which shall set forth, as to such unpatented mining claim:

(a) The date of location;

(b) The book and page of recordation of the notice or certificate of location;

(c) The section or sections of the public land surveys which embrace such mining claim; or if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument;

(d) Whether such claimant is a locator or purchaser under such location; and

(e) The name and address of such claimant and names and addresses so far as known to the claimant of any other person or persons claiming any interest or interests in or under such unpatented mining claim: such failure shall be conclusively deemed (1) to constitute a waiver and relinquishment by such mining claimant of any and all right, title, and interest under such mining claim as to, but only as to, Leasing Act minerals, and (2) to constitute a consent by such mining claimant that such mining claim and any patent issued therefor, shall be subject to the reservation of Leasing Act minerals specified in section 4 of the act, and (3) to preclude thereafter any assertion by such mining claimant of any right or title to or interest in any Leasing Act mineral by reason of such mining claim.

§ 3742.3-3 Publication.

(a) Upon receipt of a Request for Publication and accompanying instruments, if all is found regular, the Authorized officer, or the Director, as may be appropriate, at the expense of the requesting person (who prior to the commencement of publication must furnish the agreement of the publisher to hold such requesting person alone responsible for charges of publication), shall cause notice of the application, offer, permit or lease to be published in a newspaper, to be designated by the Authorized officer, or the Director, as may be appropriate, having general circulation in the county in which the lands involved are situated.

(b) If such notice is published in a daily paper, it shall be published in the Wednesday issue for 9 consecutive weeks, or, if in a weekly paper, in 9 consecutive issues, or, if in a semiweekly or tri-weekly paper, in the issue of the same day of each week for 9 consecutive weeks.

§ 3742.3-4 Proof of publication.

After the period of newspaper publication has expired, the person requesting publication shall obtain from the office of the newspaper of publication, a sworn statement[1] that the notice was published at the time and in accordance with the requirements under these regulations of this part, and shall file such sworn statement in the office where the Request for Publication was filed.

§ 3742.3-5 Mailing of copies of published notice.

Within fifteen days after the date of first publication, the person requesting such publication shall:

(a) Cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person in possession or engaged in the working of the land whose name and address is shown by the affidavit or affidavits of examination of the land filed, as set forth in § 3742.3-1.

(b) Cause a copy of such notice to be personally delivered to or to be mailed by registered mail addressed to each person who may, on or before the date of first publication, have filed for record, as to any lands described in the published notice, a Request for Notices, as provided in subsection (d) of section 7 of the Act (see § 3744.1);

(c) Cause a copy of such notice to be mailed by registered mail to each person whose name and address is set forth in the certificate required to be filed under § 3742.3-1 and

(d) File in the office where the Request for Publication was filed an affidavit that copies have been delivered or mailed as herein specified. Notwithstanding the requirements in paragraphs (a), (b) and (c) of this section, not more than one copy of such notice need be delivered or mailed to the same person.

§ 3742.3-6 Service of copies; failure to comply.

If any applicant, offeror, permittee or lessee requesting publication of notice under these regulations shall fail to comply with the requirements of section 7(a) of the Act as to personal delivery or mailing of a copy of the published notice to any person, the publication of such notice shall be deemed wholly ineffectual as to that person or as to the rights asserted by that person and the failure of that person to file a verified statement, as provided in such notice shall in no manner affect, diminish, prejudice or bar any rights of that person.

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[1] 18 U.S.C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

§ 3742.4 Failure of mining claimant to file verified statement.

If any claimant under any unpatented mining claim located prior to enactment of the Act on August 13, 1954, which embraces any of the lands described in any notice published in accordance with the regulations in this part shall fail to file a verified statement, as specified in such published notice within one hundred and fifty days from the date of the first publication of such notice, such failure shall be conclusively deemed, except as otherwise provided in § 3742.3-6.

(a) To constitute a waiver and relinquishment by such mining claimant of any and all right, title, and interest under such mining claim as to, but only as to, Leasing Act minerals, and

(b) To constitute a consent by such mining claimant that such mining claim and any patent issued therefor, shall be subject to the reservation of Leasing Act minerals specified in section 4 of the Act and

(c) To preclude thereafter any assertion by such mining claimant of any right or title to or interest in any Leasing Act minerals by reason of such mining claim.

Subpart 3743—Hearings

SOURCE: 35 FR 9741, June 13, 1970, unless otherwise noted.

§ 3743.1 Hearing procedures.

The procedures with respect to notice of such hearing and the conduct thereof, and in respect to appeals, shall follow the provisions of Appeals and Contests of the Department of the Interior and the Bureau of Land Management (Part 1850 of this chapter) relating to contests or protests affecting public lands of the United States.

§ 3743.2 Hearing; time and place.

If any verified statement shall be filed by a mining claimant then the authorized officer of the proper office, or the Director, as may be appropriate, shall fix a time and place for a hearing to determine the validity and effectiveness of the mining claimant's asserted right or interest in Leasing Act minerals. Such place of hearing shall be in the county where the lands in question, or part thereof, are located, unless the mining claimant agrees otherwise.

§ 3743.3 Stipulation between parties.

If at any time prior to a hearing the person requesting publication of notice and any person filing a verified statement pursuant to such notice shall so stipulate, then to the extent so stipulated, but only to such extent, no hearing shall be held with respect to rights asserted under that verified statement, and to the extent defined by the stipulation the rights asserted under that verified statement shall be deemed to be unaffected by the notice published pursuant to that request.

§ 3743.4 Effect of decision affirming a mining claimant's rights.

If, pursuant to a hearing held as provided in the regulations of this part, the final decision rendered in the matter shall affirm the validity and effectiveness of any mining claimant's right or interest under a mining claim as to Leasing Act minerals, then no subsequent proceedings under section 7 of the Act and the regulations of this part shall have any force or effect upon the so-affirmed right or interest of such mining claimant under such mining claim.

Subpart 3744—Claimants Rights

§ 3744.1 Recording by mining claimant of request for copy of notice.

Section 7(d) of the Act provides that:

> Any person claiming any right in Leasing Act minerals under or by virtue of any unpatented mining claim heretofore located and desiring to receive a copy of any notice of any application, offer, permit, or lease which may be published as above provided

> in subsection (a) of this section 7, and which may affect lands embraced in such mining claim, may cause to be filed for record in the county office of record where the notice or certificate of location of such mining claim shall have been recorded, a duly acknowledged request for a copy of any such notice. Such request for copies shall set forth the name and address of the person requesting copies and shall also set forth, as to each mining claim under which such person asserts rights in Leasing Act minerals:
>
> (1) The date of location;
>
> (2) The book and page of the recordation of the notice or certificate of location; and
>
> (3) The section or sections of the public land surveys which embrace such mining claim; or, if such lands are unsurveyed, either the section or sections which would probably embrace such mining claim when the public land surveys are extended to such lands or a tie by courses and distances to an approved United States mineral monument.
>
> Other than in respect to the requirements of subsection (a) of this section 7 as to personal delivery or mailing of copies of notices and in respect to the provisions of subsection (e) of this section 7, no such request for copies of published notices and no statement or allegation in such request and no recordation thereof shall affect title to any mining claim or to any land or be deemed to constitute constructive notice to any person that the person requesting copies has, or claims, any right, title, or interest in or under any mining claim referred to in such request.

[35 FR 9741, June 13, 1970]

§ 3744.2 Relinquishment by mining claimant of Leasing Act minerals.

Section 8 of the Act provides that:

> The owner or owners of any mining claim heretofore located may, at any time prior to issuance of patent therefor, waive and relinquish all rights thereunder to Leasing Act minerals. The execution and acknowledgment of such a waiver and relinquishment by such owner or owners and the recordation thereof in the office where the notice or certificate of location of such mining claim is of record shall render such mining claim thereafter subject to the reservation referred to in section 4 of this Act and any patent issued therefor shall contain such a reservation, but no such waiver or relinquishment shall be deemed in any manner to constitute any concession as to the date of priority of rights under said mining claim or as to the validity thereof.

[35 FR 9741, June 13, 1970]

Subpart 3745—Helium

§ 3745.1 Helium Reserves Nos. 1 and 2; conditions of opening to mining location and mineral leasing.

(a) Section 9 of the Act provides that:

> Lands withdrawn from the public domain which are within (a) Helium Reserve Numbered 1, pursuant to Executive Orders of March 21, 1924, and January 28, 1926, and (b) Helium Reserve Numbered 2 pursuant to Executive Order 6184 of June 26, 1933, shall be subject to entry and location under the mining laws of the United States, and to permit and lease under the mineral leasing laws, upon determination by the Secretary of the Interior, based upon available geologic and other information, that there is no reasonable probability that operations pursuant to entry or location of the particular lands under the mining laws, or pursuant to a permit or lease of the particular lands under the Mineral Leasing Act, will result in the extraction or cause loss or waste of the helium-bearing gas in the lands of such reserves: *Provided*, That the lands shall not become subject to entry, location, permit, or lease until such time as the Secretary designates in an order published in the FEDERAL REGISTER: *And provided further*, That the Secretary may at any time as a condition to continued mineral operations require the entrymen, locator, permittee, or lessee to take such measures either above or below the surface of the lands as the Secretary deems necessary to prevent loss or waste of the helium-bearing gas.

(b) No mining location made and no application for permit or lease filed as to Helium Reserve land prior to the time of opening specified in the notice of opening published in the FEDERAL REGISTER will confer any rights on the locator or applicant.

[35 FR 9741, June 13, 1970]

Subpart 3746—Fissionable Source Materials

§ 3746.1 Mining locations for fissionable source materials.

(a) In view of the amendment of section 5(b)(7) of the Atomic Energy Act of 1946 by section 10(c) of the Act of August 13, 1954 (68 Stat. 708), and of the provisions of the Atomic Energy Act of 1954 (68 Stat. 921), it is clear that after enactment of said Act of

August 13, 1954, valid mining locations under the mining laws of the United States may be based upon a discovery of a mineral deposit which is a fissionable source material.

(b) As to mining locations made prior to the enactment of said Act of August 13, 1954, section 10(d) of the act provides:

> (d) Notwithstanding the provisions of the Atomic Energy Act, and particularly sec. 5(b)(7) thereof, prior to its amendment hereby, or the provisions of the act of August 12, 1953 (67 Stat. 539), and particularly sec. 3 thereof, any mining claim, heretofore located under the mining laws of the United States for or based upon a discovery of a mineral deposit which is a fissionable source material and which, except for the possible contrary construction of said Atomic Energy Act, would have been locatable under such mining laws, shall, insofar as adversely affected by such possible contrary construction, be valid and effective, in all respects to the same extent as if said mineral deposit were a locatable mineral deposit other than a fissionable source material.

[35 FR 9741, June 13, 1970, as amended at 41 FR 50690, Nov. 17, 1976]

Group 3800—Mining Claims Under the General Mining Laws

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

Subpart 3802—Exploration and Mining, Wilderness Review Program

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AUTHORITY: 43 U.S.C. 1782.

SOURCE: 45 FR 13974, Mar. 3, 1980, unless otherwise noted.

Subpart 3802—Exploration and Mining, Wilderness Review Program

§ 3802.0-1 Purpose.

The purpose of this subpart is to establish procedures to prevent impairment of the suitability of lands under wilderness review for inclusion in the wilderness system and to prevent unnecessary or undue degradation by activities authorized by the United States Mining Laws and provide for environmental protection of the public lands and resources.

§ 3802.0-2 Objectives.

The objectives of this subpart are to:

(a) Allow mining claim location, prospecting, and mining operations in lands under wilderness review pursuant to the United States Mining Laws, but only in a manner that will not impair the suitability of an area for inclusion in the wilderness system unless otherwise permitted by law; and

(b) Assure management programs that reflect consistency between the United States Mining Laws, and other appropriate statutes.

§ 3802.0-3 Authority.

These regulations are issued under the authority of sections 302 and 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, and 1782).

§ 3802.0-5 Definitions.

As used in this subpart, the term:

(a) "Reclamation", which shall be commenced, conducted and completed as soon after disturbance as feasible without undue physical interference with mining operations, means:

(1) Reshaping of the lands disturbed and affected by mining operations to the approximate original contour or to an appropriate contour considering the surrounding topography as determined by the authorized officer;

(2) Restoring such reshaped lands by replacement of topsoil; and

(3) Revegetating the lands by using species previously occurring in the area to provide a vegetative cover at least to the point where natural succession is occuring.

(b) "Environment" means surface and subsurface resources both tangible and intangible, including air, water, mineral, scenic, cultural, paleontological, vegetative, soil, wildlife, fish and wilderness values.

(c) "Wilderness Study Area" means a roadless area of 5,000 acres or more or roadless islands which have been found through the Bureau of Land Management wilderness inventory process to have wilderness characteristics (thus having the potential of being included in the National Wilderness Preservation System), and which will be subjected to intensive analysis through the Bureau's planning system, and through public review to determine wilderness suitability, and is not yet the subject of a Congressional decision regarding its designation as wilderness.

(d) "Impairment of suitability for inclusion in the Wilderness System" means taking actions that cause impacts, that cannot be reclaimed to the point of being substantially unnoticeable in the area as a whole by the time the Secretary is scheduled to make a recommendation to the President on the suitability of a wilderness study area for inclusion in the National Wilderness Preservation System or have degraded wilderness values so far, compared with the area's values for other purposes, as to significantly constrain the Secretary's recommendation with respect to the area's suitability for preservation as wilderness.

(e) "Mining claim" means any unpatented mining claim, millsite, or tunnel site authorized by the United States mining laws.

(f) "Mining operations" means all functions, work, facilities, and activities in connection with the prospecting, development, extraction, and processing of mineral deposits and all uses reasonably incident thereto including the construction and maintenance of means of access to and across lands subject to these regulations, whether the operations take place on or off the claim.

(g) "Operator" means a person conducting or proposing to conduct mining operations.

(h) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this subpart.

(i) "Wilderness inventory" means an evaluation conducted under BLM wilderness inventory procedures which results in a written description and map showing those lands that meet the wilderness criteria established under section 603(a) of the Federal Land Policy and Management Act.

(j) "Manner and degree" means that existing operations will be defined geographically by the area of active development and the logical adjacent (not necessarily contiguous) continuation of the existing activity, and not necessarily by the boundary of a particular, claim or lease, and in some cases a change in the kind of activity if the impacts from the continuation and change of activity are not of a significantly different kind than the existing impacts. However, the significant measure for these activities is still the impact they are having on the wilderness potential of an area. It is the actual use of the area, and not the existence of an entitlement for use, which is the controlling factor. In other words, an existing activity, even if impairing, may continue to be expanded in an area or progress to the next stage of development so long as the additional impacts are not significantly different from those caused by the existing activity. In determining the manner and degree of existing operations, a rule of reason will be employed.

(k) "Valid existing right" means a valid discovery had been made on a mining claim on October 21, 1976, and continues to be valid at the time of exercise.

(l) "Undue and unnecessary degradation" means impacts greater than those that would normally be expected from an activity being accomplished in compliance with current standards and regulations and based on sound practices, including use of the best reasonably available technology.

(m) "Substantially unnoticeable" means something that either is so insignificant as to be only a very minor feature of the overall area or is not distinctly recognizable by the average visitor as being manmade or man-caused because of age, weathering or biological change.

§ 3802.0-6 Policy.

Under the 1872 Mining Law (30 U.S.C. 22 *et seq.*), a person has a statutory right consistent with other laws and Departmental regulations, to go upon the open (unappropriated and unreserved) public lands for the purpose of mineral prospecting, exploration, development, and extraction. The Federal Land Policy and management Act requires the Secretary to regulate mining operations in lands under wilderness review to prevent impairment of the suitability of these areas for inclusion in the wilderness system. However, mining operations occurring in the same manner and degree that were being conducted on October 21, 1976, may continue, even if they are determined to be impairing. Mining activities not exceeding manner and degree shall be regulated only to prevent undue and unnecessary degradation of public lands.

§ 3802.0-7 Scope.

(a) These regulations apply to mining operations conducted under the United States mining laws, as they affect the resources and environment or wilderness suitability of lands under wilderness review.

(b) These regulations apply to means of access across public land for the purpose of conducting operations under the United States mining laws.

§ 3802.1 Plan of operations.

An approved plan shall include appropriate environmental protection and reclamation measures selected by the authorized officer that shall be carried out by the operator. An operator may prepare and submit with a plan measures for the reclamation of the affected area.

§ 3802.1-1 When required.

An approved plan of operations is required for operations within lands under wilderness review prior to commencing:

(a) Any mining operations which involve construction of means of access, including bridges, landing areas for aircraft, or improving or maintaining such access facilities in a way that alters the alignment, width, gradient size, or character of such facilities;

(b) Any mining operations which destroy trees 2 or more inches in diameter at the base;

(c) Mining operations using tracked vehicles or mechanized earth moving equipment, such as bulldozers or backhoes;

(d) Any operations using motorized vehicles over other than "open use areas and trails" as defined in Subpart 6292 of this title, *off-road vehicles*, unless the use of a motorized vehicle can be covered by a temporory use permit issued under Subpart 8372 of this title;

(e) The construction or placing of any mobile, portable or fixed structure on public land for more than 30 days;

(f) On mining operations requiring the use of explosives; or

(g) Any operation which may cause changes in a water course.

§ 3802.1-2 When not required.

A plan of operations under this subpart is not required for—

(a) Searching for and occasionally removing mineral samples or specimens;

(b) Operating motorized vehicles over "open use areas and trails" as defined in 43 CFR Part 8340 so long as the vehicles conform to the operating regulations and vehicle standards contained in that subpart;

(c) Maintaining or making minor improvements of existing access routes, bridges, landing areas for aircraft, or other facilities for access where such improvements or maintenance shall not alter the alignment, width, gradient, size or character of such facilities; or

(d) Making geological, radiometric, geochemical, geophysical or other tests and measurements using instruments, devices, or drilling equipment which are transported without using mechanized earth moving equipment or tracked vehicles.

§ 3802.1-3 Operations existing on October 21, 1976.

A plan of operations shall not be required for operations that were being conducted on October 21, 1976, unless the operation is undergoing changes that exceed the manner and degree of operations on October 21, 1976. However, if the authorized officer determines that operations in the same manner and degree are causing undue or unnecessary degradation of lands and resources or adverse environmental effects, an approved plan containing protective measures may be required. Any changes planned in an existing operation that would result in operations exceeding the present manner and degree shall be delayed until the plan is processed under provisions of § 3802.1-5 of this title.

§ 3802.1-4 Contents of plan of operations.

(a) A plan of operations shall be filed in the District Office of the Bureau of Land Management in which the claim is located.

(b) No special form is required to file a plan of operations.

(c) The plan of operations shall include—

(1) The name and mailing address of both the person for whom the operation will be conducted, and the person who will be in charge of the operation and should be contacted concerning the reclamation or other aspects of the operation (any change in the mailing address shall be reported promptly to the authorized officer);

(2) A map, preferably a topographic map, or sketch showing present road, bridge or aircraft landing area locations, proposed road, bridge or aircraft landing area locations, and size of areas where surface resources will be disturbed;

(3) Information sufficient to describe either the entire operation proposed or reasonably foreseeable operations and how they would be conducted, including the nature and location of proposed structures and facilities;

(4) The type and condition of existing and proposed means of access or aircraft landing areas, the means of transportation used or to be used, and

the estimated period during which the proposed activity will take place;

(5) If and when applicable, the serial number assigned to the mining claim, mill or tunnel site filed pursuant to Subpart 3833 of this title

§ 3802.1-5 Plan approval.

(a) The authorized officer shall promptly aknowledge the receipt of a plan of operations and within 30 days of receipt of the plan act on the plan of operations to determine its acceptability.

(b) The authorized officer shall review the plan of operations to determine if the operations are impairing the suitability of the area for preservation as wilderness. Pending approval of the plan of operations, mining operations may continue in a manner that minimizes environmental impacts as prescribed in § 3802.3 of this title. After completing the review of the plan of operations, the authorized officer shall give the operator written notice that:

(1) The plan is approved subject to measures that will prevent the impairment of the suitability of the area for preservation as wilderness as determined by the authorized officer;

(2) Plans covering operations on a claim with a valid existing right are approved subject to measures that will prevent undue and unnecessary degradation of the area; or

(3) The anticipated impacts of the mining operations are such that all or part of further operations will impair the suitability of the area for preservation as wilderness, the plan is disapproved and continuance of such operations is not allowed.

(c) Upon receipt of a plan of operations for mining activities commencing after the effective date of these regulations, the authorized officer may notify the operator, in writing, that:

(1) In an area of lands under wilderness review where an inventory has not been completed, an operator may agree to operate under a plan of operations that includes terms and conditions that would be applicable in a wilderness study area. Without an agreement to this effect, no action may be taken on the plan until a wilderness inventory is completed; or

(2) The area has been inventoried and a final decision has been issued and become effective that the area does not contain wilderness characteristics, and that the mining operations are no longer subject to these regulations; or

(3) The anticipated impacts are such that all or part of the proposed mining operations will impair the suitability of the area for preservation as wilderness, and therefore, the proposed mining operation cannot be allowed.

(d) In addition to paragraphs (a) through (c) of this section, the following general plan approval procedures may also apply. The authorized officer may notify the operator, in writing, that:

(1) The plan of operations is unacceptable and the reasons therefore; or

(2) Modification of the plan of operations is necessary to meet the requirements of these regulations;

(3) The plan of operations is being reviewed, but that more time, not to exceed an additional 60 days, is necessary to complete such review, setting forth the reasons why additional time is needed except in those instances where it is determined that an Environmental Impact Statement, compliance with section 106 of the National Historic Preservation Act (NHPA) or section 7 of the Endangered Species Act is needed. Periods during which the area of operations is inaccessible for inspection due to climatic conditions, fire hazards or other physical conditions or legal impediments, shall not be included when counting the 60 calendar day period; or

(4) The proposed operations do not require a plan of operations.

(e) If the authorized officer does not notify the operator of any action on the plan of operations within the 30-day period, or the 60-day extension, or notify the operator of the need for an Environmental Impact Statement or compliance with section 106 of NHPA or section 7 of the Endangered Species Act, operations under the plan may begin. The option to begin operations under this section does not constitute approval of a plan of operations. However, if the authorized officer at a later date finds that operations under the plan are impairing wilderness suitability, the authorized officer shall notify the operator that the operations are not in compliance with these regulations and what changes are needed, and shall require the operator to submit a modified plan of operations, within a time specified in the notice. If the operator is notified of the need for an Environmental Impact Statement, the plan of operations shall not be approved before 30 days after a final statement is prepared and filed with the Environmental Protection Agency. If the is operator notified of the need for compliance with section 106 of the NHPA or section 7 of the Endangered Species Act, the plan of operations shall not be approved until the compliance responsibilities of the Bureau of Land Management are satisfied.

(f) If cultural resource properties listed on or eligible for listing on the National Register of Historic Places are within the area of operations, no operations which would affect those resources shall be approved until compliance with section 106 of the National Historic Preservation Act is accomplished. The operator is not required to do or to pay for an inventory. The responsibility and cost of the cultural resource mitigation, except as provided in § 3802.3-2(f) of this title, included in an approved plan of operation shall be the operator's.

(g) Pending final approval of the plan of operations, the authorized officer may approve any operations that may be necessary for timely compliance with requirements of Federal and State laws. Such operations shall be conducted so as to prevent impairment of wilderness suitability and to minimize environmental impacts as prescribed by the authorized officer in accordance with the standards contained in § 3802.3 of this title.

§ 3802.1-6 Modification of plan.

(a) If the development of a plan for an entire operation is not possible, the operator shall file an initial plan setting forth this proposed operation to the degree reasonably foreseeable at that time. Thereafter, the operator shall file a supplemental plan or plans prior to undertaking any operations not covered by the initial plan.

(b) At any time during operations under an approved plan of operations, the authorized officer or the operator may initiate a modification of the plan detailing any necessary changes that were unforeseen at the time of filing of the plan of operations. If the operator does not furnish a proposed modification within a time considered reasonable by the authorized officer, the authorized officer may recommend to the State Director that the operator be required to submit a proposed modification of the plan. The recommendation of the authorized officer shall be accompanied by a statement setting forth the supporting facts and reasons for his recommendations. In acting upon such recommendation, except in the case of a modification under § 3802.1-5(e) of this title, the State Director shall determine (1) whether all reasonable measures were taken by the authorized officer to predict the environmental impacts of the proposed operations; (2) whether the disturbance is or may become of such significance as to require modification of the plan of operations in order to meet the requirement for environmental protection specified in § 3802.3-2 of this title, and (3) whether the disturbance can be minimized using reasonable means. Lacking such a determination by the State Director, an operator is not required to submit a proposed modification of an approved plan of operations. Operations may continue in accordance with the approved plan of operations until a modified plan is approved, unless the State Director determines that the operations are causing impairment or unnecessary or undue degradation to surface resources. He shall advise the operator of those measures needed to avoid such damage and the operator shall immediately take all necessary steps to implement measures recommended by the State Director.

(c) A supplemental plan of operations or a modification of an approved plan of operations shall be approved by the authorized officer in the same manner as the initial plan of operations.

§ 3802.1-7 Existing operations.

(a) Persons conducting mining operations on the effective date of these regulations, who would be required to submit a plan of operations under § 3802.1-1 of this title, may continue operations but shall, within 60 days after the effective date of these regulations, submit a plan of operations. Upon a showing of good cause, the authorized officer shall grant an extension of time to submit a plan of operations not to exceed an additional 180 days.

(b) Operations may continue according to the submitted plan of operations during its review unless the operator is notified otherwise by the authorized officer.

(c) Upon approval of a plan of operations, mining operations shall be conducted in accordance with the approved plan.

§ 3802.2 Bond requirements.

(a) Any operator who conducts mining operations under an approved plan of operations shall, if required to do so by the authorized officer, furnish a bond in an amount determined by the authorized officer. The authorized officer may determine not to require a bond where mining operations would cause nominal environmental damage, or the operator has an excellent past record for reclamation. In determining the amount of the bond, the authorized officer shall consider the estimated cost of stabilizing and reclaiming all areas disturbed by the operations consistent with § 3802.3-2(h) of this title.

(b) In lieu of a bond, the operator may deposit and maintain in a Federal depository account of the United States Treasury, as directed by the authorized officer, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having a face and market value at the time of deposit of not less than the required dollar amount of the bond.

(c) In place of the individual bond on each separate operation, a blanket bond covering hardrock mining operations may be furnished, at the option of the operator, if the terms and conditions as determined by the authorized officer are sufficient to comply with these regulations.

(d) In the event that an approved plan of operations is modified in accordance with § 3802.1-5 of this title, the authorized officer shall review the initial bond for adequacy and, if necessary, shall require that the amount of bond be adjusted to conform to the plan of operations, as modified.

(e) When a mining claim is patented, except for the California Desert Conservation Area, the authorized officer shall release the operator from that portion of the performance bond and plan of operations which applies to operations within the boundaries of the patented land. The authorized officer shall release the operator from the remainder of the performance bond and plan of operations (covering approved means of access outside the boundaries of the mining claim) when the operator has either completed reclamation in accordance with paragraph (f) of this section or those requirements are waived by the authorized officer.

(f) When all or any portion of the reclamation has been completed in accordance with paragraph (h) of § 3802.3-2 of this title, the operator shall notify the authorized officer who shall promptly make a joint inspection with the operator. The authorized officer shall then notify the operator whether the performance under the plan of operations is accepted. When the authorized officer has accepted as completed any portion of the reclamation, he shall reduce proportionally the amount of bond with respect to the remaining reclamation.

§ 3802.3 Environmental protection.

§ 3802.3-1 Environmental assessment.

(a) When a plan of operations or significant modification is filed, the authorized officer shall make an environmental assessment to identify the impacts of the proposed mining operations upon the environment and to determine whether the proposed activity will impair the suitability of the area for preservation as wilderness or cause unnecessary and undue degradation and whether an environmental impact statement is required.

(b) Following completion of the environmental assessment or the environmental impact statement, the authorized officer shall develop measures deemed necessary for inclusion in the plan of operations that will prevent impairment of wilderness suitability and undue or unnecessary degradation of land and resources.

(c) If as a result of the environment assessment, the authorized officer determines that there is substantial public interest in the proposed mining operations, the operator may be notified that an additional period of time is required to consider public comments. The period shall not exceed the additional 60 days provided for approval of a plan in § 3802.1-4 of this title except as provided for cases requiring an environmental impact statement, a cultural resource inventory or section 7 of the Endangered Species Act.

§ 3802.3-2 Requirements for environmental protection.

(a) *Air Quality.* The operator shall comply with applicable Federal and State air quality standards, including the requirements of the Clean Air Act (42 U.S.C. 1857 et seq.).

(b) *Water Quality.* The operator shall comply with applicable Federal and State water quality standards, including regulations issued pursuant to the Federal Water Pollution Control Act (33 U.S.C. 1151 et seq.).

(c) *Solid Wastes.* The operator shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes. All garbage, refuse, or waste shall either be removed from the affected lands or disposed or treated to minimize, so far as is practicable, its impact on the environment and the surface resources. All tailings, waste rock, trash, deleterious materials of substances and other waste produced by operations shall be deployed, arranged, disposed or treated to minimize adverse impact upon the environment, surface and subsurface resources.

(d) *Visual Resources.* The operator shall, to the extent practicable, harmonize operations with the visual resources, identified by the authorized officer, through such measures as the design, location of operating facilities and improvements to blend with the landscape.

(e) *Fisheries, Wildlife and Plant Habitat.* The operator shall take such action as may be needed to minimize or prevent adverse impact upon plants, fish, and wildlife, including threatened or endangered species, and their habitat which may be affected by the operations.

(f) *Cultural and Paleontological Resources.* (1) The operator shall not knowingly disturb, alter, injure, destroy or take any scientifically important paleontological remains or any historical, archaeological, or cultural district, site, structure, building or object.

(2) The operator shall immediately bring to the attention of the authorized officer any such cultural and/or paleontological resources that might be altered or destroyed by his operation, and shall leave such discovery intact until told to proceed by the authorized officer. The authorized officer shall evaluate the discoveries brought to his attention, and determine within 10 working days what action shall be taken with respect to such discoveries.

(3) The responsibility and the cost of investigations and salvage of such values discovered during approved operations shall be the Federal Government's.

(g) *Access Routes.* No new access routes that would cause more than temporary impact and therefore would impair wilderness suitability shall be constructed in a wilderness study area. Temporary access routes that are constructed by the operator shall be constructed and maintained to assure adequate drainage and to control or prevent damage to soil, water, and other resource values. Unless otherwise approved by the authorized officer, roads no longer needed for operations shall be closed to normal vehicular traffic; bridges and culverts shall be removed; cross drains, dips, or water bars shall be constructed, and the road surface shall be shaped to as near a natural contour as practicable, be stabilized and revegetated as required in the plan of operations.

(h) *Reclamation.* (1) The operator shall perform reclamation of those lands disturbed or affected by the mining operation conducted by the operator under an approved plan of operations containing reclamation measures stipulated by the authorized officer as contemporaneously as feasible with operations. The disturbance or effect on mined land shall not include that caused by separate operations in areas abandoned before the effective date of these regulations.

(2) An operator may propose and submit with his plan of operations measures for reclamation of the affected area.

(i) *Protection of survey monuments.* The operator shall, to the extent practicable and consistent with the operation, protect all survey monuments, witness corners, reference monuments, bearing trees and line trees against destruction, obliteration, or damage from the approved operations. If, in the course of operations, any monuments, corners or accessories are destroyed, obliterated or damaged by such operations, the operator shall immediately report the matter to the authorized officer. The authorized officer shall prescribe in writing the requirement for the restoration or reestablishment of monuments, corners, bearing trees, and line trees.

§ 3802.4 General provisions.

§ 3802.4-1 Noncompliance.

(a) An operator who conducts mining operations undertaken either without an approved plan of operations or without taking actions specified in a notice of noncompliance within the time specified therein may be enjoined by an appropriate court order from continuing such operations and be liable for damages for such unlawful acts.

(b) Whenever the authorized officer determines that an operator is failing or has failed to comply with the requirements of an approved plan of operations, or with the provisions of these regulations and that noncompliance is causing impairment of wilderness suitability or unnecessary and undue degradation of the resources of the lands involved, the authorized officer shall serve a notice of noncompliance upon the operator by delivery in person to the operator or the operator's authorized agent, or by certified mail addressed to the operator's last known address.

(c) A notice of noncompliance shall specify in what respects the operator is failing or has failed to comply with the requirements of the plan of operations of the provisions of applicable regulations, and shall specify the actions which are in violation of the plan or regulations and the actions which shall be taken to correct the noncompliance and the time limits, not to exceed 30 days, within which corrective action shall be taken.

§ 3802.4-2 Access.

(a) An operator is entitled to non-exclusive access to his mining operations consistent with provisions of the United States mining laws and Departmental regulations.

(b) In approving access as part of a plan of operations, the authorized officer shall specify the location of the access route, the design, construction, operation and maintenance standards, means of transportation, and other conditions necessary to prevent impairment of wilderness suitability, protect the environment, the public health or safety, Federal property and economic interests, and the interests of other lawful users of adjacent lands or lands traversed by the access route. The authorized officer may also require the operator to utilize existing access routes in order to minimize the number of separate rights-of-way, and, if practicable, to construct access routes within a designated transportation and utility corridor. When commercial hauling is involved and the use of an existing access route is required, the authorized officer may require the operator to make appropriate arrangements for use and maintenance.

§ 3802.4-3 Multiple-use conflicts.

In the event that uses under any lease, license, permit, or other authorization pursuant to the provisions of any other law, shall conflict, interfere with, or endanger operations in approved plans or otherwise authorized by these regulations, the conflicts shall be reconciled, as much as practicable, by the authorized officer.

§ 3802.4-4 Fire prevention and control.

The operator shall comply with all applicable Federal and State fire laws and regulations, and shall take all reasonable measures to prevent and suppress fires on the area of mining operations.

§ 3802.4-5 Maintenance and public safety.

During all operations, the operator shall maintain his structures, equipment, and other facilities in a safe and orderly manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced, or otherwise identified to protect the public in accordance with applicable Federal and State laws and regulations.

§ 3802.4-6 Inspection.

The authorized officer shall periodically inspect operations to determine if the operator is complying with these regulations and the approved plan of operations, and the operator shall permit access to the authorized officer for this purpose.

§ 3802.4-7 Notice of suspension of operations.

(a) Except for seasonal suspension, the operator shall notify the authorized officer of any suspension of operations within 30 days after such suspension. This notice shall include:

(1) Verification of intent to maintain structures, equipment, and other facilities, and

(2) The expected reopening date.

(b) The operator shall maintain the operating site, structure, and other facilities in a safe and environmentally acceptable condition during nonoperating periods.

(c) The name and address of the operator shall be clearly posted and maintained in a prominent place at the entrance to the area of mining operations during periods of nonoperation.

§ 3802.4-8 Cessation of operations.

The operator shall, within 1 year following cessation of operations, remove all structures, equipment, and other facilities and reclaim the site of operations, unless variances are agreed to in writing by the authorized officer. Additional time may be granted by the authorized officer upon a show of good cause by the operator.

§ 3802.5 Appeals.

(a) Any party adversely affected by a decision of the authorized officer or the State Director made pursuant to the provisions of this subpart shall have a right of appeal to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to Part 4 of this title.

(b) In any case involving lands under the jurisdiction of any agency other than the Department of the Interior, or an office of the Department of the Interior other than the Bureau of Land Management, the office rendering a decision shall designate the authorized officer of such agency as an adverse party on whom a copy of any notice of appeal and any statement of reasons, written arguments, or brief must be served.

§ 3802.6 Public availability of information.

(a) Except as provided herein, all information and data, including plans of operation, submitted by the operator shall be available for examination by the public at the office of the authorized officer in accordance with the provisions of the Freedom of Information Act (F.O.I.A.).

(b) Information and data submitted and specifically identified by the operator as containing trade secrets or confidential or privileged commercial or financial information and so determined by the authorized officer will not be available for public examination.

(c) The determination concerning specific information which may be withheld from public examination will be made in accordance with the rules in 43 CFR Part 2.

Subpart 3809—Surface Management

GENERAL

AUTHORITY: Secs. 2319 (30 U.S.C. 22) and 2478 (43 U.S.C. 1201) of the Revised Statutes and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

SOURCE: 45 FR 78909, Nov. 26, 1980, unless otherwise noted.

§ 3809.0-1 Purpose.

The purpose of this subpart is to establish procedures to prevent unnecessary or undue degradation of federal lands which may result from operations authorized by the mining laws.

§ 3809.0-2 Objectives.

The objectives of this regulation are to:

(a) Provide for mineral entry, exploration, location, operations, and purchase pursuant to the mining laws in a manner that will not unduly hinder such activities but will assure that these activities are conducted in a manner that will prevent unnecessary or undue degradation and provide protection of nonmineral resources of the federal lands;

(b) Provide for reclamation of disturbed areas; and

(c) Coordinate, to the greatest extent possible, with appropriate State agencies, procedures for prevention of unnecessary or undue degradation with respect to mineral operations.

§ 3809.0-3 Authority.

(a) Section 2319 of the Revised Statutes (30 U.S.C. 22 *et seq.*) provides that exploration, location and purchase of valuable mineral deposits, under the mining laws, on federal lands shall be "under regulations prescribed by law," and section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), provides that those regulations shall be issued by the Secretary.

(b) Sections 302, 303, 601, and 603 of the Federal and Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) require the Secretary to take any action, by regulation or otherwise, to prevent unnecessary or undue degradation of the federal lands, provide for enforcement of those regulations, and direct the Secretary to manage the California Desert Conservation Area under reasonable regulations which will protect the scenic, scientific, and environmental values against undue impairment, and to assure against pollution of streams and waters.

(c) The Act of July 23, 1955 (30 U.S.C. 612), provides that rights under mining claims located after July 23, 1955, shall prior to issuance of patent therefor, be subject to the right of the United States to manage and dispose of the vegetative surface resources and to manage other surface resources. The Act also provides that "Any mining claim hereafter located under the mining laws of the United States shall not be used, prior to issuance to patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto."

(d) Section 9 of the Wild and Scenic Rivers Act (16 U.S.C. 1280) provides that regulations issued shall, among other things, provide safeguards against pollution of the rivers involved and unnecessary impairment of the scenery within the area designated for potential addition to, or an actual component of the national wild and scenic rivers system.

§ 3809.0-5 Definitions.

As used in this subpart, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management to whom authority has been delegated to perform the duties described in this subpart.

(b) "Casual Use" means activities ordinarily resulting in only negligible disturbance of the federal lands and resources. For example, activities are generally considered "casual use" if they do not involve the use of mechanized earth moving equipment or explosives or do not involve the use of motorized vehicles in areas designated as closed or limited to off-road vehicles as defined in Subpart 8340 of this title.

(c) "Federal lands" means lands subject to the mining laws including, but not limited to, the certain "public lands" defined in section 103 of the Federal Land Policy and Management Act of 1976. Federal lands does not include lands in the National Park System, National Forest System, and the National Wildlife Refuge System, nor does it include acquired lands, Stockraising Homestead lands or lands where only the mineral interest is reserved to the United States or lands under Wilderness Review and administered by the Bureau of Land Management (these lands are subject to the 43 CFR Part 3802 regulations).

(d) "Mining claim" means any unpatented mining claim, millsite, or tunnel site located under the mining laws and those patented mining claims and millsites located in the California Desert Conservation Area which have been patented subsequent to the enactment of the Federal Land Policy and Management Act of October 21, 1976.

(e) "Mining laws" means the Lode Law of July 26, 1866, as amended (14 Stat. 251); the Placer Law of July 9, 1870, as amended (16 Stat. 217); and the Mining Law of May 10, 1872, as amended (17 Stat. 91); and all laws supplementing and amending those laws, including among others the Building Stone Act of August 4, 1892, as amended (27 Stat. 348); and the Saline Placer Act of January 31, 1901 (31 Stat. 745).

(f) "Operations" means all functions, work, facilities, and activities in connection with prospecting, discovery and assessment work, development, extraction, and processing of mineral deposits locatable under the mining laws and all other uses reasonably incident thereto, whether on a mining claim or not, including but not limited to the construction of roads, transmission lines, pipelines, and other means of access for support facilities across federal lands subject to these regulations.

(g) "Operator" means a person conducting or proposing to conduct operations.

(h) "Person" means any citizen of the United States or person who has declared the intention to become such and includes any individual, partnership, corporation, association, or other legal entity.

(i) "Project area" means a single tract of land upon which an operator is, or will be, conducting operations. It may include one mining claim or a group of mining claims under one ownership on which operations are or will be conducted, as well as federal lands on which an operator is exploring or prospecting prior to locating a mining claim.

(j) "Reclamation" means taking such reasonable measures as will prevent unnecessary or undue degradation of the federal lands, including reshaping land disturbed by operations to an appropriate contour and, where necessary, revegetating disturbed areas so as to provide a diverse vegetative cover. Reclamation may not be required where the retention of a stable highwall or other mine workings is needed to preserve evidence of mineralization.

(k) "Unnecessary or undue degradation" means surface disturbance greater than what would normally result when an activity is being accomplished by a prudent operator in usual, customary, and proficient operations of similar character and taking into consideration the effects of operations on other resources and land uses, including those resources and uses outside the area of operations. Failure to initiate and complete reasonable mitigation measures, including reclamation of disturbed areas or creation of a nuisance may constitute unnecessary or undue degradation. Failure to comply with applicable environmental protection statutes and regulations thereunder will constitute unnecessary or undue degradation. Where specific statutory authority requires the attainment of a stated level of protection or reclamation, such as in the California Desert Conservation Area, Wild and Scenic Rivers, and other such areas, that level of protection shall be met.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980]

§ 3809.0-6 Policy.

Consistent with section 2 of the Mining and Mineral Policy Act of 1970 and section 102(a) (7), (8), and (12) of the Federal Land Policy and Management Act, it is the policy of the Department of the Interior to encourage the development of federal mineral resources and reclamation of disturbed lands. Under the mining laws a person has a statutory right, consistent with Departmental regulations, to go upon the open (unappropriated and unreserved) federal lands for the purpose of mineral prospecting, exploration, development, extraction and other uses reasonably incident thereto. This statutory right carries with it the responsibility to assure that operations include adequate and responsible measures to prevent unnecessary or undue degradation of the federal lands and to provide for reasonable reclamation.

§ 3809.1 Operations.

§ 3809.1-1 Reclamation.

All operations, whether casual, under a notice, or by a plan of operations, shall be reclaimed as required in this title.

§ 3809.1-2 Casual use—negligible disturbance.

No notification to or approval by the authorized officer is required for casual use operations. However, casual use operations are subject to monitoring by the authorized officer to ensure that unnecessary or undue degradation of federal lands will not occur.

§ 3809.1-3 Notice—disturbance of 5 acres or less.

(a) All operators on project areas whose operations, including access across federal lands to the project area, cause a cumulative surface disturbance of 5 acres or less during any calendar year shall notify the authorized officer in the District office of the Bureau of Land Management having jurisdiction over the land in which the claim(s) or project area is located. Prior to conducting additional operations under a subsequent notice, the operator shall have completed reclamation of operations which were conducted under any previous notice. Notification of such activities, by the operator, shall be made at least 15 calendar days before commencing operations under this subpart by a written notice or letter.

(b) Approval of a notice, by the authorized officer, is not required. Consultation with the authorized officer may be required under § 3809.1-3(c)(3) of this title when the construction of access routes are involved.

(c) The notice or letter shall include:

(1) Name and mailing address of the mining claimant and operator, if other than the claimant. Any change of operator or in the mailing address of the mining claimant or operator shall be reported promptly to the authorized officer;

(2) When applicable, the name of the mining claim(s), and serial number(s) assigned to the mining claim(s) recorded pursuant to Subpart 3833 of this title on which disturbance will likely take place as a result of the operations;

(3) A statement describing the activities proposed and their location in sufficient detail to locate the activities on the ground, and giving the approximate date when operations will start. The statement shall include a description and location of access routes to be constructed and the type of equipment to be used in their construction. Access routes shall be planned for only the minimum width needed for operations and shall follow natural contours, where practicable, to minimize cut and fill. When the construction of access routes involves slopes which require cuts on the inside edge in excess of 3 feet, the operator may be required to consult with the authorized officer concerning the most appropriate location of the access route prior to commencing operations;

(4) A statement that reclamation of all areas disturbed will be completed to the standard described in § 3809.1-3(d) of this title and that reasonable measures will be taken to prevent unnecessary or undue degradation of the federal lands during operations.

(d) The following standards govern activities conducted under a notice:

(1) Access routes shall be planned for only the minimum width needed for operations and shall follow natural contours, where practicable to minimize cut and fill.

(2) All tailings, dumps, deleterious materials or substances, and other waste produced by the operations shall be disposed of so as to prevent unnecessary or undue degradation and

in accordance with applicable Federal and State Laws.

(3) At the earliest feasible time, the operator shall reclaim the area disturbed, except to the extent necessary to preserve evidence of mineralization, by taking reasonable measures to prevent or control on-site and off-site damage of the federal lands.

(4) Reclamation shall include, but shall not be limited to:

(i) Saving of topsoil for final application after reshaping of disturbed areas have been completed;

(ii) Measures to control erosion, landslides, and water runoff;

(iii) Measures to isolate, remove, or control toxic materials;

(iv) Reshaping the area disturbed, application of the topsoil, and revegetation of disturbed areas, where reasonably practicable; and

(v) Rehabilitation of fisheries and wildlife habitat.

(5) When reclamation of the disturbed area has been completed, except to the extent necessary to preserve evidence of mineralization, the authorized officer shall be notified so that an inspection of the area can be made.

(e) Operations conducted pursuant to this subpart are subject to monitoring by the authorized officer to ensure that operators are conducting operations in a manner which will not cause unnecessary or undue degradation.

(f) Failure of the operator to complete reclamation to the standards described in this subpart may cause the operator to be subject to a notice of noncompliance as described in § 3809.3-2 of this title.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980]

§ 3809.1-4 Plan of operations—when required.

An approved plan of operations is required prior to commencing:

(a) Operations which exceed the disturbance level (5 acres) described in § 3809.1-3 of this title.

(b) Any operation, except casual use, in the following designated areas:

(1) California Desert Conservation Area;

(2) Areas designated for potential addition to, or an actual component of the national wild and scenic rivers system.

(3) Designated Areas of Critical Environmental Concern;

(4) Areas designated as part of the National Wilderness Preservation System and administered by the Bureau of Land Management;

(5) Areas withdrawn from operation of the mining laws in which valid existing rights are being exercised; and

(6) Areas designated as "closed" or "limited" to off-road vehicle use as defined in Subpart 8340 of this title.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980]

§ 3809.1-5 Filing and contents of plan of operations.

(a) A plan of operations must be filed in the District Office of the Bureau of Land Management having jurisdiction over the federal lands in which the claim(s) or project area is located.

(b) No special form is required for filing a plan.

(c) The plan shall include:

(1) The name and mailing address of the operator (and claimant if not the operator). Any change of operator or change in the mailing address shall be promptly reported to the authorized officer;

(2) A map, preferably a topographic map, or sketch showing existing and/or proposed routes of access, aircraft landing areas, or other means of access, and size of each area where surface disturbance will occur;

(3) When applicable, the name of the mining claim(s) and mining claim serial numbers assigned to the mining claim(s) recorded pursuant to Subpart 3833 of this title.

(4) Information sufficient to describe or identify the type of operations proposed, how they will be conducted and the period during which the proposed activity will take place;

(5) Measures to be taken to prevent unnecessary or undue degradation and measures to reclaim disturbed areas resulting from the proposed operations, including the standards listed in § 3809.1-3(d) of this title. Where an

operator advises the authorized officer that he/she does not have the necessary technical resources to develop such measures the authorized officer will assist the operator in developing such measures. If an operator submits reclamation measures, the authorized officer will ensure that the operator's plan is sufficient to prevent unnecessary or undue degradation. All reclamation measures developed by the operator, or by the authorized officer in conjunction with the operator, shall become a part of the plan of operations.

(6) Measures to be taken during extended periods of nonoperation to maintain the area in a safe and clean manner and to reclaim the land to avoid erosion and other adverse impacts. If not filed at the time of plan submittal, this information shall be filed with the authorized officer whenever the operator anticipates a period of nonoperation.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980]

§ 3809.1-6 Plan approval.

(a) A proposed plan of operations shall be submitted to the authorized officer, who shall promptly acknowledge receipt thereof to the operator. The authorized officer shall, within 30 days of such receipt, analyze the proposal in the context of the requirement to prevent unnecessary or undue degradation and provide for reasonable reclamation, and shall notify the operator:

(1) That the plan is approved; or

(2) Of any changes in or additions to the plan necessary to meet the requirements of these regulations; or

(3) That the plan is being reviewed, but that a specified amount of time, not to exceed an additional 60 days, is necessary to complete the review, setting forth the circumstances which justify additional time for review. However, days during which the area of operations is inaccessible for inspection shall not be counted when computing the 60 day period; or

(4) That the plan cannot be approved until 30 days after a final environmental statement has been prepared and filed with the Environmental Protection Agency; or

(5) That the plan cannot be approved until the authorized officer has complied with section 106 of the National Historic Preservation Act or section 7 of the Endangered Species Act.

(b) The authorized officer shall consult with the appropriate official of the bureau or agency having surface management responsibilities where such responsibility is not exercised by the Bureau of Land Management. Prior to plan approval the authorized officer shall obtain the concurrence of such appropriate official to the terms and conditions that may be needed to prevent unnecessary or undue degradation.

(c) The authorized officer shall undertake an appropriate level of cultural resource inventory of the area to be disturbed. The inventory shall be completed within the time allowed by these regulations for approval of the plan (30 days). The operator is not required to do the inventory but may hire an archaeologist approved by the Bureau of Land Management in order to complete the inventory more expeditiously. The responsibility for and cost of salvage of cultural resources discovered during the inventory shall be the Federal Government's. The responsibility of avoiding adverse impacts on those cultural resources discovered during the inventory shall be the operator's.

(d) Pending final approval of the plan, the authorized officer shall approve any operations that may be necessary for timely compliance with requirements of Federal and State laws, subject to any terms and conditions that may be needed to prevent unnecessary or undue degradation.

(e) In the event of a change of operators involving an approved plan of operations, the new operator shall satisfy the requirements of § 3809.1-9 of this title as it relates to bonding.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980]

§ 3809.1-7 Modification of plan.

(a) At any time during operations under an approved plan, the operator on his/her own initiative may modify the plan or the authorized officer may request the operator to do so.

(b) A significant modification of an approved plan must be reviewed and approved by the authorized officer in the same manner as the initial plan.

(c)(1) If, when requested to do so by the authorized officer, the operator does not furnish a proposed modification within a reasonable time, usually 30 days, the authorized officer may recommend to the State Director that the operator be required to submit a proposed modification of the plan. The recommendation of the authorized officer shall be accompanied by a statement setting forth the facts and the reasons for the recommendations.

(2) In acting upon such recommendations the State Director shall determine, within 30 days, whether:

(i) All reasonable measures were taken by the authorized officer at the time the plan was approved to ensure that the proposed operations would not cause unnecessary or undue degradation of the federal land;

(ii) The disturbance from the operations of the plan as approved or from unforeseen circumstances is or may become of such significance that modification of the plan is essential in order to prevent unnecessary or undue degradation; and

(iii) The disturbance can be minimized using reasonable means.

(3) Once the matter has been sent to the State Director, an operator is not required to submit a proposed modification of an approved plan until a determination is made by the State Director. Where the State Director determines that a plan shall be modified, the operator shall timely submit a modified plan to the authorized officer for review and approval.

(4) Operations may continue in accordance with the approved plan until a modified plan is approved, unless the State Director determines that the operations are causing unnecessary or undue degradation to the land. The State Director shall advise the operator of those reasonable measures needed to avoid such degradation and the operator shall immediately take all necessary steps to implement those measures within a reasonable period established by the State Director.

§ 3809.1–8 Existing operations.

(a) Persons conducting operations on the effective date of these regulations, who would be required to submit a notice under § 3809.1–3 or a plan of operations under § 3809.1–4 of this title may continue operations but shall, within:

(1) 30 days submit a notice with required information outlined in § 3809.1–3 of this title for operations where 5 acres or less will be disturbed during a calendar year; or

(2) 120 days submit a plan in those areas identified in § 3809.1–4 of this title. Upon a showing of good cause, the authorized officer may grant an extension of time, not to exceed an additional 180 days, to submit a plan.

(b) Operations may continue according to the submitted plan during its review. If the authorized officer determines that operations are causing unnecessary or undue degradation of the federal lands involved, the authorized officer shall advise the operator of those reasonable measures needed to avoid such degradation, and the operator shall take all necessary steps to implement those measures within a reasonable time recommended by the authorized officer. During the period of an appeal, if any, operations may continue without change, subject to other applicable Federal and State laws.

(c) Upon approval of a plan by the authorized officer, operations shall be conducted in accordance with the approval plan.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980]

§ 3809.1–9 Bonding requirements.

(a) No bond shall be required for operations that constitute casual use (§ 3809.1–2) or that are conducted under a notice (§ 3809.1–3 of this title).

(b) Any operator who conducts operations under an approved plan of operations as described in § 3809.1–5 of this title may, at the discretion of the authorized officer, be required to furnish a bond in an amount specified by the authorized officer. The authorized officer may determine not to require a bond in circumstances where operations would cause only minimal disturbance to the land. In determining the amount of the bond, the authorized officer shall consider the estimated cost of reasonable stabilization and reclamation of areas disturbed. In lieu of the submission of a separate bond, the authorized officer may accept evidence of an existing bond pursuant to State law or regulations for the same area covered by the plan of operations, upon a determination that the coverage would be equivalent to that provided in this section.

(c) In lieu of a bond, the operator may deposit and maintain in a Federal depository account of the United States Treasury, as directed by the authorized officer, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having a market value at the time of deposit of not less than the required dollar amount of the bond.

(d) In place of the individual bond on each separate operation, a blanket bond covering statewide or nationwide operations may be furnished at the option of the operator, if the terms and conditions, as determined by the authorized officer, are sufficient to comply with these regulations.

(e) In the event that an approved plan is modified in accordance with § 3809.1-7 of this title, the authorized officer shall review the initial bond for adequacy and, if necessary, adjust the amount of the bond to conform to the plan as modified.

(f) When all or any portion of the reclamation has been completed in accordance with the approved plan, the operator may notify the authorized officer that such reclamation has occurred and that she/he seeks a reduction in bond or Bureau approval of the adequacy of the reclamation, or both. Upon any such notification, the authorized officer shall promptly inspect the reclaimed area with the operator. The authorized officer shall then notify the operator, in writing, whether the reclamation is acceptable. When the authorized officer has accepted as completed any portion of the reclamation, the authorized officer shall authorize that the bond be reduced proportionally to cover the remaining reclamation to be accomplished.

(g) When a mining claim is patented, the authorized officer shall release the operator from that portion of the performance bond which applies to operations within the boundaries of the patented land. The authorized officer shall release the operator from the remainder of the performance bond, including the portion covering approved means of access outside the boundaries of the mining claim, when the operator has completed acceptable reclamation. However, existing access to patented mining claims, if across Federal lands shall continue to be regulated under the approved plan. The provisions of this subsection do not apply to patents issued on mining claims within the boundaries of the California Desert Conservation Area (See § 3809.6 of this title).

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980]

§ 3809.2 Prevention of unnecessary or undue degradation.

§ 3809.2-1 Environmental assessment.

(a) When an operator files a plan of operations or a significant modification which encompasses land not previously covered by an approved plan, the authorized officer shall make an environmental assessment or a supplement thereto to identify the impacts of the proposed operations on the lands and to determine whether an environmental impact statement is required.

(b) In conjunction with the operator, the authorized officer shall use the environmental assessment to determine the adequacy of mitigating measures and reclamation procedures included in the plan to insure the prevention of unnecessary or undue degradation of the land. If an operator advises the authorized officer that he/she is unable to prepare mitigating measures, the authorized officer, in conjunction with the operator, shall use the environmental assessment as a basis for assisting the operator in developing such measures.

(c) If, as a result of the environmental assessment, the authorized officer determines that there is "substantial public interest" in the plan, the authorized officer shall notify the operator, in writing, that an additional period of time, not to exceed the additional 60 days provided for approval of a plan is § 3809.1-6(a) of this title, is required to consider public comments on the environmental assessment.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980]

§ 3809.2-2 Other requirements for environmental protection.

All operations, including casual use and operations under either a notice (§ 3809.1-3) or a plan of operations (§ 3809.1-4 of this title), shall be conducted to prevent unnecessary or undue degradation of the federal lands and shall comply with all pertinent Federal and State laws, including but not limited to the following:

(a) *Air Quality.* All operators shall comply with applicable Federal and State air quality standards, including the Clean Air Act (42 U.S.C. 1857 *et seq.*).

(b) *Water Quality.* All operators shall comply with applicable Federal and State water quality standards, including the Federal Water Pollution Control Act, as amended (30 U.S.C. 1151 *et seq.*).

(c) *Solid Wastes.* All operators shall comply with applicable Federal and State standards for the disposal and treatment of solid wastes, including regulations issued pursuant to the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*). All garbage, refuse or waste shall either be removed from the affected lands or disposed of or treated to minimize, so far as is practicable, its impact on the lands.

(d) *Fisheries, Wildlife and Plant Habitat.* The operator shall take such action as may be needed to prevent adverse impacts to threatened or endangered species, and their habitat which may be affected by operations.

(e) *Cultural and Paleontological Resources.* (1) Operators shall not knowingly disturb, alter, injure, or destroy any scientifically important paleontological remains or any historical or archaeological site, structure, building or object on federal lands.

(2) Operators shall immediately bring to the attention of the authorized officer any cultural and/or paleontological resources that might be altered or destroyed on federal lands by his/her operations, and shall leave such discovery intact until told to proceed by the authorized officer. The authorized officer shall evaluate the discoveries brought to his/her attention, take action to protect or remove the resource, and allow operations to proceed within 10 working days.

(3) The Federal Government shall have the responsibility and bear the cost of investigations and salvage of cultural and paleontology values discovered after a plan of operations has been approved, or where a plan is not involved.

(f) *Protection of survey monuments.* To the extent practicable, all operators shall protect all survey monuments, witness corners, reference monuments, bearing trees and line trees against unnecessary or undue destruction, obliteration or damage. If, in the course of operations, any monuments, corners, or accessories are destroyed, obliterated or damaged by such operations, the operator shall immediately report the matter to the authorized officer. The authorized officer shall prescribe, in writing, the requirements for the restoration or reestablishment of monuments, corners, bearing and line trees.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980]

§ 3809.3 General provisions.

§ 3809.3-1 Applicability of State law.

(a) Nothing in this subpart shall be construed to effect a preemption of State laws and regulations relating to the conduct of operations or reclamation on federal lands under the mining laws.

(b) After the publication date of these regulations the Director, Bureau of Land Management, shall conduct a review of State laws and regulations in effect or due to come into effect, relating to unnecessary or undue degradation of lands disturbed by exploration for, or mining of, minerals locatable under the mining laws.

(c) The Director may consult with appropriate representatives of each State to formulate and enter into agreements to provide for a joint Federal-State program for administration and enforcement. The purpose of such agreements is to prevent unnecessary or undue degradation of the federal lands from operations which are conducted under the mining laws, to prevent unnecessary administrative delay and to avoid duplication of administration and enforcement of laws. Such agreements may, whenever possible, provide for State administration and enforcement of such programs.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980]

§ 3809.3-2 Noncompliance.

(a) Failure of an operator to file a notice under § 3809.1-3 of this title or a plan of operations under § 3809.1-4 of this title will subject the operator, at the discretion of the authorized officer, to being served a notice of noncompliance or enjoined from the continuation of such operations by a court order until such time as a notice or plan is filed with the authorized officer. The operator shall also be responsible to reclaim operations conducted without an approved plan of operations or prior to the filing of a required notice.

(b) Failure to reclaim areas disturbed by operations under § 3809.1-3 of this title is a violation of these regulations.

(1) Where an operator is conducting operations covered by 3809.1-3 (notice) of this title and fails to comply with the provisions of that section or properly conduct reclamation according to standards set forth in 3809.1-3(d) of this title, a notice of noncompliance shall be served by delivery in person to the operator or his/her authorized agent, or by certified mail addressed to his/her address of record.

(2) Operators conducting operations under an approved plan of operations who fails to follow the approved plan of operations may be subject to a notice of noncompliance. A notice of noncompliance shall be served in the same manner as described in § 3809.3-2(b)(1) above.

(c) All operators who conduct operations under a notice pursuant to § 3809.1-3 and a plan pursuant to § 3809.1-4 of this title on federal lands without taking the actions specified in a notice of noncompliance within the time specified therein may be enjoined by an appropriate court order from continuing such operations and be liable for damages for such unlawful acts.

(d) A notice of noncompliance shall specify in what respects the operator is failing or has failed to comply with the requirements of applicable regulations, and shall specify the actions which are in violation of the regulations and the actions which shall be taken to correct the noncompliance and the time, not to exceed 30 days, within which corrective action shall be started.

(e) Failure of an operator to take necessary actions on a notice of noncompliance, may constitute justification for requiring the submission of a plan of operations under § 3809.1-5 of this title, and mandatory bonding for subsequent operations which would otherwise be conducted pursuant to a notice under § 3809.1-3 of this title.

[45 FR 78909, Nov. 26, 1980; 45 FR 82934, Dec. 17, 1980]

§ 3809.3-3 Access.

(a) An operator is entitled to access to his operations consistent with provisions of the mining laws.

(b) Where a notice or a plan of operations is required, it shall specify the location of access routes for operations and other conditions necessary to prevent unnecessary or undue degradation. The authorized officer may require the operator to use existing roads to minimize the number of access routes, and, if practicable, to construct access roads within a designated transportation or utility corridor. When commercial hauling is involved and the use of an existing road is required, the authorized officer may require the operator to make appropriate arrangements for use and maintenance.

§ 3809.3-4 Fire prevention and control.

The operator shall comply with all applicable Federal and State fire laws and regulations, and shall take all reasonable measures to prevent and suppress fires in the area of operations.

§ 3809.3-5 Maintenance and public safety.

During all operations, the operator shall maintain his structures, equipment, and other facilities in a safe and orderly manner. Hazardous sites or conditions resulting from operations shall be marked by signs, fenced, or otherwise identified to alert the public in accordance with applicable Federal and State laws and regulations.

§ 3809.3-6 Inspection.

The authorized officer may periodically inspect operations to determine if the operator is complying with these regulations. The operator shall permit the authorized officer access for this purpose.

§ 3809.3-7 Periods of non-operation.

All operators shall maintain the site, structures and other facilities of the operations in a safe and clean condition during any non-operating periods. All operators may be required, after an extended period of non-operation for other than seasonal operations, to remove all structures, equipment and other facilities and reclaim the site of operations, unless he/she receives permission, in writing, from the authorized officer to do otherwise.

§ 3809.4 Appeals.

(a) Any operator adversely affected by a decision of the authorized officer made pursuant to the provisions of this subpart shall have a right of appeal to the State Director, and thereafter to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to Part 4 of this title, if the State Director's decision is adverse to the appellant.

(b) No appeal shall be considered unless it is filed, in writing, in the office of the authorized officer who made the decision from which an appeal is being taken, within 30 days after the date of the decision. A decision of the authorized officer from which an appeal is taken to the State Director shall be effective during the pendency of an appeal. A request for a stay may accompany the appeal.

(c) The appeal to the State Director shall contain:

(1) The name and mailing address of the appellant.

(2) When applicable, the name of the mining claim(s) and serial number(s) assigned to the mining claims recorded pursuant to Subpart 3833 of this title which are subject to the appeal.

(3) A statement of the reasons for the appeal and any arguments the appellant wishes to present which would justify reversal or modification of the decision.

(d) The State Director shall promptly render a decision on the appeal. The decision shall be in writing and shall set forth the reasons for the decision. The decision shall be sent to the appellant by certified mail, return receipt requested.

(e) The decision of the State Director, when adverse to the appellant, may be appealed to the Board of Land Appeals, Office of Hearings and Appeals, pursuant to Part 4 of this title.

(f) Any party, other than the operator, aggrieved by a decision of the authorized officer shall utilize the appeals procedures in Part 4 of this title. The filing of such an appeal shall not stop the authorized officer's decision from being effective.

(g) Neither the decision of the authorized officer nor the State Director shall be construed as final agency action for the purpose of judicial review of that decision.

§ 3809.5 Public availability of information.

(a) Information and data submitted and specifically identified by the operator as containing trade secrets or confidential or privileged commercial or financial information shall not be available for public examination. Other information and data submitted by the operator shall be available for examination by the public at the office of the authorized officer in accordance with the provisions of the Freedom of Information Act.

(b) The determination concerning specific information which may be withheld from public examination shall be made in accordance with the rules in 43 CFR Part 2.

§ 3809.6 Special provisions relating to mining claims patented within the boundaries of the California Desert Conservation Area.

In accordance with section 601(f) of the Federal Land Policy and Management Act of October 21, 1976, all patents issued on mining claims located within the boundaries of the California Desert Conservation Area after the enactment of the Federal Land Policy and Management Act shall be subject to the regulations in this part, including the continuation of a plan of operations and of bonding with respect to the land covered by the patent.

PART 3810—LANDS AND MINERALS SUBJECT TO LOCATION

Subpart 3811—Lands Subject to Location and Purchase

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Subpart 3811—Lands Subject to Location and Purchase

SOURCE: 35 FR 9742, June 13, 1970, unless otherwise noted.

§ 3811.1 Lands: general.

Vacant public surveyed or unsurveyed lands are open to prospecting, and upon discovery of mineral, to location and purchase. The Act of June 4, 1897 (30 Stat. 36), provides that "any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry," notwithstanding the reservation. This makes mineral lands in the forest reserves in the public land states, subject to location and entry under the general mining laws in the usual manner. Lands entered or patented under the stockraising homestead law (title to minerals and the use of the surface necessary for mining purposes can be acquired), lands entered under other agricultural laws but not perfected, where prospecting can be done peaceably are open to location.

§ 3811.2 Lands: specific.

§ 3811.2-1 States where locations may be made.

(a) Mining locations may be made in the States of Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

(b) The laws of the United States relating to mining claims were extended to Alaska by section 8 of the Act of May 17, 1884 (23 Stat. 26), and sections 15, 16, and 26 of the Act of June 6, 1900 (31 Stat. 327, 329; 48 U.S.C. 119, 120, 381-383) again, in terms, extended the mining laws of the United States and all right incident thereto, to the State, with certain further provisions with respect to the acquisition of claims thereunder.

(c) The law in respect to placer claims in Alaska was modified and amended by the Act of August 1, 1912 (37 Stat. 242) and section 4 of that Act was amended by the Act of March 3, 1925 (43 Stat. 1118).

(d) By the Act of May 4, 1934 (43 Stat. 663; 48 U.S.C. 381a) the Acts of August 1, 1912, and March 3, 1925, were repealed and the general mining laws of the United States applicable to placer mining claims were declared to be in full force and effect in the State.

§ 3811.2-2 Lands in national parks and national monuments.

Lands in national parks and national monuments are not subject to mining location, except where specifically authorized by law.

(a) The mining laws were extended to the Death Valley National Monument, Calif., by the Act of June 13, 1933 (48 Stat. 139; 16 U.S.C. 447). The Act provides that surface use of locations, entries, or patents is subject to general regulations prescribed by the Secretary of the Interior. The regulations governing surface use in Death Valley National Monument are in 36 CFR 7.26.

(b) Mining locations may be made on lands in the Mount McKinley National Park, under the provisions of the Act of February 26, 1917 (39 Stat. 938; 16 U.S.C. 347-354) which expressly provides that the United States mining laws shall be applicable to mineral lands in that area. See § 3826.1.

(c) Regulations relative to mining in the Glacier Bay National Monument are contained in § 3826.4 of this chapter.

(d) Mining locations in the Olympic National Park, Washington, made prior to June 29, 1943, are governed by § 3826.2 of this chapter.

(e) Mining locations in the Organ Pipe Cactus National Monument may be made pursuant to § 3826.5 of this chapter.

[35 FR 9743, June 13, 1970, as amended by Circ. 2275, 35 FR 12723, Aug. 11, 1970]

§ 3811.2-3 Lands in Indian reservations.

Lands in Indian reservations are not subject to the United States mining laws, except in the Papago Indian Reservation from June 18, 1934 to May 27, 1955. See Subpart 3825 of this chapter.

§ 3811.2-4 Lands in national forests.

For mining claims in national forests, see § 3811.1.

§ 3811.2-5 O and C and Coos Bay Wagon Road lands.

Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands, located in Oregon, are subject to mining locations in accordance with provisions of Subpart 3821 of this chapter.

§ 3811.2-6 Lands in powersite withdrawals.

Mining claims may be located on power site withdrawals subject to the provisions of Part 3730 of this chapter.

§ 3811.2-7 Fissionable source material on coal lands.

Mining claims for fissionable source materials may be located on lands known to be valuable for coal under certain conditions. See Part 3720 of this chapter.

§ 3811.2-8 Lands under Alaska Public Sale Act.

(a) Lands segregated for classification or sold under the Alaska Public Sale Act of August 30, 1949 (63 Stat. 679; 48 U.S.C. 364a-364e), are subject to mineral appropriation under the provision of section 3 of that Act for the development of the reserved minerals under applicable laws, including the United States mining laws, and subject to the rules and regulations of the Secretary of the Interior necessary to provide protection and compensation for damages from mining activities to the surface and improvements thereon. See Subparts 2770 and 3922 of this chapter.

§ 3811.2-9 Lands under Color of Title Act.

Lands patented under the Color of Title Act (43 U.S.C. 1068), by exchange under the Taylor Grazing Act (43 U.S.C. 415g) and by Forest Exchanges (16 U.S.C. 485) with mineral reservation to the United States, are subject to appropriation under the mining or mineral leasing laws for the reserved materials. See Group 2200 and Subpart 2540 of this chapter. Minerals in acquired lands of the United States are not subject to mining location but the minerals therein may be acquired in accordance with the regulations contained in Part 3500.

Subpart 3812—Minerals Under the Mining Laws

§ 3812.1 Minerals subject to location.

Whatever is recognized as a mineral by the standard authorities, whether metallic or other substance, when found in public lands in quantity and quality sufficient to render the lands valuable on account thereof, is treated as coming within the purview of the mining laws. Deposits of oil, gas, coal, potassium, sodium, phosphate, oil shale, native asphalt, solid and semisolid bitumen, and bituminous rock including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried, the deposits of sulphur in Louisiana and New Mexico belonging to the United States can be acquired under the mineral leasing laws (see § 3100.0-3(a)(1)), and are not subject to location and purchase under the United States mining laws. The so-called "common variety" mineral materials and petrified wood on the public lands may be acquired under the Materials Act, as amended (see Part 3600).

[35 FR 9743, June 13, 1970]

Subpart 3813—Disposal of Reserved Minerals Under the Act of July 17, 1914

SOURCE: 35 FR 9743, June 13, 1970, unless otherwise noted.

§ 3813.0-3 Authority.

The Act of July 20, 1956 (70 Stat. 592), which amended the Act of July 17, 1914 (38 Stat. 509; 30 U.S.C. sec. 122), was enacted to permit the disposal of certain reserved mineral deposits under the mining laws of the United States.

§ 3813.1 Minerals reserved by the Act of July 17, 1914, subject to mineral location, entry and patenting.

The Act of July 17, 1914 (38 Stat. 509; 30 U.S.C. sec. 122), as amended by the act of July 20, 1956 (70 Stat. 592), provides in part as follows:

> * * * such deposits to be subject to disposal by the United States only as shall be hereafter expressly directed by law: *Provided, however,* That all mineral deposits heretofore or hereafter reserved to the United States under this Act which are subject, at the time of application for patent to valid and subsisting rights acquired by discovery and location under the mining laws of the United States made prior to the date of the Mineral Leasing Act of February 25, 1920 (41 Stat. 437), shall hereafter be subject to disposal to the holders of those valid and subsisting rights by patent under the mining laws of the United States in force at the time of such disposal. Any person qualified to acquire the reserved deposits may enter upon said lands with a view of prospecting for the same upon the approval of the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages of the crops and improvements on such lands by reason of such prospecting, the measure of any

such damage to be fixed by agreement of parties or by a court of competent jurisdiction. Any person who has acquired from the United States the title to or the right to mine and remove the reserved deposits, should the United States dispose of the mineral deposits in lands, may re-enter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining and removel of the minerals therefrom; and mine and remove such minerals, upon payment of damages caused thereby to the owner of the land, or upon giving a good and sufficient bond or undertaking therefor in an action instituted in any competent court to ascertain and fix said damages:

§ 3813.2 Minerals subject to disposition.

The Act of July 20, 1956, applies only to any mineral deposit discovered and located under the U.S. mining laws prior to February 25, 1920, and reserved to the United States under the Act of July 17, 1914 (38 Stat. 509; 30 U.S.C. 122), and which, at the time of application for mineral patent, is subject to valid and subsisting rights under the said mining laws. Only that mineral deposit together with the right to use the surface to prospect for, mine, and remove the said deposit shall, on or after July 20, 1956, be subject to disposal to the holders of such valid and subsisting rights by patent under the mining laws in force at the time of such disposal. "Oil" reserved under the Act of 1914 has been held to include oil shale. See 52 L.D. 329.

§ 3813.3 Provisions of the mineral patent.

(a) Each patent issued under the Act of July 20, 1956, shall specifically name the discovered mineral deposit which had been reserved to the United States under the Act of July 17, 1914, and shall recite that, in accordance with the reservation in the land patent, the mineral patentee and its successors (or his heirs and assigns, if a person) shall have the right to prospect for, mine and remove the mineral deposit for which the patent is issued.

(b) If, when it is determined that mineral deposit is subject to patenting under the mining laws pursuant to the Act of July 20, 1956, there is a subsisting mineral lease or permit covering such deposit, the mineral patent shall be issued subject to the mineral lease or permit for so long as rights under the lease or permit shall exist, the patentee being substituted for the United States as lessor or permittor and the patentee being entitled to all revenues derived subsequent to the issuance of patent from any such lease or permit.

Subpart 3814—Disposal of Reserved Minerals Under the Stockraising Homestead Act

SOURCE: 35 FR 9743, June 13, 1970, unless otherwise noted.

§ 3814.1 Mineral reservation in entry and patent; mining and removal of reserved deposits; bonds.

(a) Section 9 of the Act of December 29, 1916 (39 Stat. 864; 43 U.S.C. 299), provides that all entries made and patents issued under its provisions shall contain a reservation to the United States of all coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same; also that the coal and other mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal.

(b) Said section 9 also provides that any person qualified to locate and enter the coal or other mineral deposits, or having the right to mine and remove the same under the laws of the United States, shall have the right at all times to enter upon the lands entered or patented under the act, for the purpose of prospecting for the coal or other mineral therein, provided he shall not injure, damage, or destroy the permanent improvements of the entryman or patentee and shall be liable to and shall compensate the entryman or patentee for all damages to the crops on the land by reason of such prospecting. Under the Act of June 21, 1949 (30 U.S.C. 54), a mineral entryman on a stock raising or other homestead entry or patent is also held liable for any damage that may be caused to the value of the land for grazing by such prospecting for, mining, or removal of minerals except that vested rights existing prior to June 21, 1949, are not impaired.

(c) It is further provided in said section 9 that any person who has acquired from the United States the coal or other mineral deposits in any such land or the right to mine and remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the coal, or other minerals, first, upon securing the written consent or waiver of the homestead entryman or patentee; or, second, upon payment of the damages to crops or other tangible improvements to the owner thereof under agreement; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit of the entryman or owner of the land, to secure payment of such damages to the crops or tangible improvements of the entryman or owner as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon. This bond on Form 3814 must be executed by the person who has acquired from the United States the coal or other mineral deposits reserved, as directed in said section 9, as principal, with two competent individual sureties, or a bonding company which has complied with the requirements of the act of August 13, 1894 (28 Stat. 279; 6 U.S.C. 6-13), as amended by the act of March 23, 1910 (36 Stat. 241; 6 U.S.C. 8, 9), and must be in the sum of not less than $1,000. Qualified corporate sureties are preferred and may be accepted as sole surety. Except in the case of a bond given by a qualified corporate surety there must be filed therewith affidavits of justification by the sureties and a certificate by a judge or clerk of a court of record, a United States district attorney, a United States commissioner, or a United States postmaster as to the identity, signatures, and financial competency of the sureties. Said bond, with accompanying papers, must be filed with the authorized officer of the proper office, and there must also be filed with such bond evidence of service of a copy of the bond upon the homestead entryman or owner of the land.

(d) If at the expiration of 30 days after the receipt of the aforesaid copy of the bond by the entryman or owner of the land, no objections are made by such entryman or owner of the land and filed with the authorized officer against the approval of the bond by them, he may, if all else be regular, approve said bond. If, however, after receipt by the homestead entryman or owner of the lands of copy of the bond, such homestead entryman or owner of the land timely objects to the approval of the bond by said authorized officer, the said officer will immediately give consideration to said bond, accompanying papers, and objections filed as aforesaid to the approval of the bond, and if, in consequence of such consideration he shall find and conclude that the proffered bond ought not to be approved, he will render decision accordingly and give due notice thereof to the person proffering the bond, at the same time advising such person of his right of appeal to the Director of the Bureau of Land Management from the action in disapproving the bond so filed and proffered. If, however, the authorized officer, after full and complete examination and consideration of all the papers filed, is of the opinion that the proffered bond is a good and sufficient one and that the objections interposed as provided herein against the approval thereof do not set forth sufficient reasons to justify him in refusing to approve said proffered bond, he will, in writing, duly notify the homestead entryman or owner of the land of his decision in this regard and allow such homestead entryman or owner of the land 30 days in which to appeal to the Director of the Bureau of Land Management. If appeal from the adverse decision of the authorized officer be not timely filed by the person proffering the bond, the authorized officer will indorse upon the bond "disapproved" and other appropriate notations, and close the case. If, on the other hand, the homestead entryman or owner of the lands fails to timely appeal from the decision of the authorized officer adverse to the contentions of said homestead entryman or owners of the lands, said authorized officer may, if all else be regular, approve the bond.

(e) The coal and other mineral deposits in the lands entered or patented under the act of December 29, 1916, will become subject to existing laws, as to purchase or lease, at any time after allowance of the homestead entry unless the lands or the coal or other mineral deposits are, at the time of said allowance, withdrawn or reserved from disposition.

[35 FR 9743, June 13, 1970, as amended at 41 FR 29122, July 15, 1976]

§ 3814.2 Mineral reservation in patent: conditions to be noted on mineral applications.

(a) There will be incorporated in patents issued on homestead entries under this act the following:

> Excepting and reserving, however, to the United States all the coal and other minerals in the lands so entered and patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove all the coal and other minerals from the same upon compliance with the conditions, and subject to the provisions and limitations, of the act of December 29, 1916 (39 Stat. 862).

(b) Mineral applications for the reserved deposits disposable under the act must bear on the face of the same, before being signed by the declarant or applicant and presented to the authorized officer the following notation:

> Patents shall contain appropriate notations declaring same subject to the provisions of the act of December 29, 1916 (39 Stat. 862), with reference to disposition, occupancy, and use of the land as permitted to an entryman under said act.

Subpart 3815—Mineral Locations in Stock Driveway Withdrawals

SOURCE: 35 FR 9744, June 13, 1970, unless otherwise noted.

§ 3815.1 Mineral locations.

Under authority of the provisions of the Act of January 29, 1929 (45 Stat. 1144; 43 U.S.C. 300), the rules, regulations, and restrictions in this section are prescribed for prospecting for minerals of the kinds subject to the United States mining laws, and the locating of mining claims upon discovery of such minerals in lands within stock driveway withdrawals made before or after May 4, 1929.

§ 3815.2 Prospecting and mining.

All prospecting and mining operations shall be conducted in such manner as to cause no interference with the use of the surface of the land for stock driveway purposes, except such as may actually be necessary.

§ 3815.3 Surface limitation.

While a mining location will be made in accordance with the usual procedure for locating mining claims, and will describe a tract of land, having due regard to the limitations of area fixed by the mining laws, the locator will be limited under his location to the right to the minerals discovered in the land and to mine and remove the same, and to occupy so much of the surface of the claim as may be required for all purposes reasonably incident to the mining and removal of the minerals.

§ 3815.4 Protection of stock.

All excavations and other mining work and improvements made in prospecting and mining operations shall be fenced or otherwise protected to prevent the same from being a menace to stock on the land.

§ 3815.5 Access to stock watering places.

No watering places shall be inclosed, nor proper and lawful access of stock thereto prevented, nor the watering of stock thereat interfered with.

§ 3815.6 Locations subject to mining laws.

Prospecting for minerals and the location of mining claims on lands in such withdrawals shall be subject to the provisions and conditions of the mining laws and the regulations thereunder.

§ 3815.7 Mining claims subject to stock driveway withdrawals.

Mining claims on lands within stock driveway withdrawals, located prior to May 4, 1929, and subsequent to the date of the withdrawal, may be held and perfected subject to the provisions and regulations in this section.

§ 3815.8 Notation required in application for patent; conditions required in patent.

(a) Every application for patent for any minerals located subject to this act must bear on its face, before being executed by the applicant and presented for filing, the following notation:

> Subject to the provisions of section 10 of the act of December 29, 1916 (39 Stat. 862), as amended by the act of January 29, 1929 (45 Stat. 1144).

Like notation will be made by the manager on the final certificates issued on such a mineral application.

(b) Patents issued on such applications will contain the added condition:

> That this patent is issued subject to the provisions of the act of December 29, 1916 (39 Stat. 862), as amended by the act of January 29, 1929 (45 Stat. 1144), with reference to the disposition, occupancy and use of the land as permitted to an entryman under said act.

Subpart 3816—Mineral Locations in Reclamation Withdrawals

SOURCE: 35 FR 9744, June 13, 1970, unless otherwise noted.

§ 3816.1 Mineral locations.

The Act of April 23, 1932 (47 Stat. 136; 43 U.S.C. 154), authorizes the Secretary of the Interior in his discretion to open to location, entry and patent under the general mining laws with reservation of rights, ways and easements, public lands of the United States which are known or believed to contain valuable deposits of minerals and which are withdrawn from development and acquisition because they are included within the limits of withdrawals made pursuant to section 3 of the reclamation Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 416).

§ 3816.2 Application to open lands to location.

Application to open lands to location under the Act may be filed by a person, association or corporation qualified to locate and purchase claims under the general mining laws. The application must be executed in duplicate and filed in the proper office, must describe the land the applicant desires to locate, by legal subdivision if surveyed, or by metes and bounds if unsurveyed, and must set out the facts upon which is based the knowledge or belief that the lands contain valuable mineral deposits, giving such detail as the applicant may be able to furnish as to the nature of the formation, kind and character of the mineral deposits. Each application shall be accompanied by a $10 nonrefundable service charge.

§ 3816.3 Recommendations of Bureau of Reclamation to open lands.

When the application is received in the Bureau of Land Management, if found satisfactory, the duplicate will be transmitted to the Bureau of Reclamation with request for report and recommendation. In case the Bureau of Reclamation makes an adverse report on the application, it will be rejected subject to right of appeal.

§ 3816.4 Recommendations as to reservations and contract form.

If in the opinion of the Bureau of Reclamation the lands may be opened under the act without prejudice to the rights of the United States, the report will recommend the reservation of such ways, rights and easements considered necessary or appropriate, and/or the form of contract to be executed by the intending locator or entryman as a condition precedent to the vesting of any rights in him, which may be necessary for the protection of the irrigation interests.

PART 3820—AREAS SUBJECT TO SPECIAL MINING LAWS

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3826.5-1 Mining locations.
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Subpart 3821—O and C Lands

SOURCE: 35 FR 9745, June 13, 1970, unless otherwise noted.

§ 3821.1 General provisions.

(a) The Act of April 8, 1948 (62 Stat. 162) reopens the revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands (hereinafter referred to in this section as the O. and C. lands) in Oregon, except power sites, to exploration, location, entry, and disposition under the United States Mining Laws. The act also validates mineral claims, if otherwise valid, located on the O. and C. lands during the period from August 28, 1937 to April 8, 1948.

(b) The procedure in the locating of mining claims, performance of annual labor, and the prosecution of mineral patent proceedings in connection with O. and C. lands is the same as provided by the United States Mining Laws and the general regulations in this part, and is also subject to the additional conditions and requirements hereinafter set forth.

§ 3821.2 Requirements for filing notices of locations of claims; descriptions.

(a) Where prior to April 8, 1948, a mining claim has been located upon O.

and C. lands, the owner thereof must file for record, not later than October 5, 1948, in the proper office, a copy of the notice of location of the claim. With respect to all mining claims located on O. and C. lands on or after April 8, 1948, the owner thereof must file for record, within 60 days of the date of such mining location, in the proper office, a copy of the notice of location of the claim.

(b) If the location affects surveyed lands and the copy of location notice does not describe those legal subdivisions, section, township and range partly or wholly covered by the mining claim, the copy must be accompanied by a statement of the owner of the claim describing the legal subdivisions affected.

(c) If the location affects unsurveyed lands and the copy of location notice does not show the land described therein connected by course and distance to the nearest corner of the public land surveys and does not give the probable legal subdivisions affected if the lands were surveyed, the copy must be accompanied by a statement of the owner of the claim giving that information or satisfactory reasons for not doing so.

(d) The name and address of each owner of the claim should be furnished with the other data required by this section.

§ 3821.3 Requirement for filing statements of assessment work.

The owner of any unpatented mining claim located upon O. and C. lands must also file for record in the proper office in the district in which the claim is situated, within 60 days after the expiration of any annual assessment year, a statement as to the assessment work done or improvements made during the previous assessment year, or, as to compliance in lieu thereof, with any applicable relief act.

§ 3821.4 Restriction on use of timber; application for such use.

The owner of any unpatented mining claim located upon O. and C. lands on or after August 28, 1937, shall not acquire title, possessory or otherwise, to the timber, now or hereafter growing upon such claim. Such timber may be managed and disposed of under existing law or as may be provided by subsequent law. The owner of such unpatented mining claim, until such time as the timber is otherwise disposed of by the United States, if he wishes to cut and use so much of the timber upon his claim as may be necessary in the development and operation of his mine, shall file a written application with the district forester for permission to do so. The application shall set forth the estimated quantity and kind of timber desired and the use to which it will be put. The applicant shall not cut any of the timber prior to the approval of the application therefor.

§ 3821.5 Applications for final certificates and patents.

Applications for patents and final certificates in connection with mining claims located upon O. and C. lands on or after August 28, 1937 must be noted "Mining claims on O. and C. lands, under the act of April 8, 1948." All patents issued on such claims located on or after August 28, 1937, shall contain an appropriate reference to the act of April 8, 1948, and shall indicate that the patent is issued subject to the conditions and limitations of the act.

Subpart 3822—Lands Patented Under the Alaska Public Sale Act

§ 3822.1 Subject to mining location.

Lands segregated for classification or sold under the Alaska Public Sale Act of August 30, 1949 (63 Stat. 679, 48 U.S.C. 364a-364e) are subject to mining location, under the provision of section 3 of that Act for the development of the reserved minerals under applicable law, including the United States mining laws, and subject to the rules and regulations of the Secretary of the Interior necessary to provide protection and compensation for damages from mining activities to the surface and improvements thereon. Such mining locations are subject to the applicable general regulations in Group 3800 and to the additional conditions and requirements in § 2771.6-2 of this chapter.

[35 FR 9746, June 13, 1970]

§ 3822.2 Compensation to surface rights holder.

Any party who obtains the right, whether by license, permit, lease, or location, to prospect for, mine, or remove the minerals after the land shall have been segregated or disposed of under the act, will be required to compensate the holder of the surface rights for any damages that may be caused to the value of the land and to the tangible improvements thereon by such mining operations or prospecting, and may be required by an authorized officer, as to mining claims, or by the terms of the mineral license, permit or lease, to post a surety bond not to exceed $20,000 in amount to protect the surface owner against such damage, prior to the commencement of mining operations.

[35 FR 9746, June 13, 1970]

Subpart 3823—Prospecting, Mineral Locations, and Mineral Patents Within National Forest Wilderness

Source: 35 FR 9746, June 13, 1970, unless otherwise noted.

§ 3823.0-3 Purpose.

This subpart sets forth procedures to be followed by persons wishing to prospect on lands within National Forest Wilderness, and special provisions pertaining to mineral locations and mineral patents within National Forest Wilderness.

§ 3823.0-5 Definition.

As used in this subpart the term "National Forest Wilderness" means an area or part of an area of National Forest lands designated by the Wilderness Act as a wilderness area within the National Wilderness Preservation System.

§ 3823.1 Prospecting within National Forest Wilderness for the purpose of gathering information about mineral resources.

(a) The provisions of the Wilderness Act do not prevent any activity, including prospecting, within National Forest Wilderness for the purpose of gathering information about mineral or other resources if such activity is conducted in a manner compatible with the preservation of the wilderness environment. While information gathered by prospecting concerning mineral resources within National Forest Wilderness may be utilized in connection with the location of valuable mineral deposits which may be discovered through such activity and which may be open to such location, attention is directed to the fact that no claim may be located after midnight, December 31, 1983, and no valid discovery may be made after that time on any location purportedly made before that time.

(b) All persons wishing to carry on any activity, including prospecting, for the purpose of gathering information about mineral or other resources on lands within National Forest Wilderness should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the regulations of the Secretary of Agriculture governing surface use of the lands for such activity.

§ 3823.2 Mineral locations within National Forest Wilderness.

(a) Until midnight, December 31, 1983, the mining laws of the United States and the regulations of this chapter pertaining thereto, including any amendments thereto effective during such period, shall to the same extent as applicable before September 3, 1964, extend to National Forest Wilderness, subject to the provisions of such regulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act.

(b) All mineral locations established after September 3, 1964, and lying within the National Forest Wilderness, shall be held and used solely for mining or processing operations and uses incident thereto, and such locations shall carry with them no rights in excess of those rights which may be patented under the provisions of § 3823.3 of this chapter.

(c) All persons wishing to carry on any activity under the mining laws on lands within National Forest Wilderness, on or after September 3, 1964, should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the regulations of the Secretary of Agriculture governing activities to be performed thereon in connection with the locations of mining claims.

§ 3823.3 Mineral patents within National Forest Wilderness.

(a) Each patent issued under the U.S. mining laws for mineral locations established after September 3, 1964, or validated by discovery of minerals occurring after September 3, 1964, and lying within National Forest Wilderness shall, in accordance with the provisions of section 4(d)(3) of the Wilderness Act:

(1) Convey title to the mineral deposits within the patented lands, together with the right to cut and use so much of the mature timber therefrom as may be needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available, and if the timber is cut under sound principles of forest management as defined by the National Forest rules and regulations;

(2) Reserve to the United States all title in or to the surface of the lands and products thereof; and

(3) Provide that no use of the surface of the patented lands or the resources therefrom not reasonably required for carrying on mining or prospecting shall be allowed except as expressly provided in the Wilderness Act.

(b) Each patent to which the provisions of this section are applicable shall contain the express condition that the use of the patented lands shall be subject to regulations prescribed by the Secretary of Agriculture as referred to in § 3823.2 of this subpart and that the patented lands shall be held open for reasonable inspection by authorized officers of the U.S. Government for the purpose of observing compliance with the provisions thereof.

§ 3823.4 Withdrawal from operation of the mining laws.

Effective at midnight, December 31, 1983, subject to valid rights then existing, the minerals in lands within National Forest Wilderness are withdrawn from the operation of the mining laws by virtue of the provisions of section 4(d)(3) of the Wilderness Act.

Subpart 3824—City of Prescott, Arizona, Watershed

§ 3824.1 Mining locations.

(a) The Act of January 19, 1933 (47 Stat. 771; 16 U.S.C. 482a) applies to approximately 3,600 acres in the city of Prescott municipal watershed, within the Prescott National Forest, Arizona. Rights acquired under mining locations made after the date of the act on any of the described lands are limited to the right to occupy and use so much of the surface of the land covered by the location as is reasonably necessary to carry on prospecting and mining, including the taking of mineral deposits and timber required by or in the mining operations; and patents for such locations shall convey title to the mineral deposits and a limited right to cut and remove timber for mining purposes, such patent to reserve to the United States all title in or to the surface of the lands and products thereof.

(b) The authorized officer will note on the face of all applications for patent for mining claims embracing any of the described lands that the same are subject to the conditions, provisions, limitations, and reservations of the act except applications for claims located prior to the date of the act and as to which the applicants expressly request patent under the provisions of the general mining laws. Patents issued subject to the act will contain appropriate conditions with respect to cutting of timber and reservation of surface in the United States.

(c) Under section 3 of the Act (47 Stat. 771; 16 U.S.C. 482a), valid claims existing at the date of the act and thereafter maintained may be perfected under this act or under the law under which they were initiated, as the claimant may desire. Such claimant may, therefore, continue the development of his claim under the provisions of the act and secure patent for the mineral deposits only under its provisions, or he may continue to hold under the general mining laws and secure patent which will convey to him the surface as well as the minerals in the claim.

[35 FR 9746, June 13, 1970]

Subpart 3825—Papago Indian Reservation, Arizona

SOURCE: 35 FR 9747, June 13, 1970, unless otherwise noted.

§ 3825.0-3 Authority.

(a) The Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461-479), as amended by the act of August 28, 1937 (50 Stat. 862; 25 U.S.C. 463), revokes departmental order of October 28, 1932, which temporarily withdrew from all forms of mineral entry or claim the lands within the Papago Indian Reservation and restores, as of June 18, 1934, such lands to exploration, location and purchase under the existing mining laws of the United States.

(b) The regulations in this part apply to entries made prior to May 27, 1955. By virtue of the Act of May 27, 1955 (69 Stat. 67; 25 U.S.C. 463) mineral entries may no longer be made within the Papago Indian Reservation.

§ 3825.1 Mining locations in Papago Indian Reservation in Arizona.

(a) The procedure in the location of mining claims, performance of annual labor and the prosecution of patent proceedings therefor shall be the same as provided by the United States mining laws and regulations thereunder, with the additional requirements prescribed in this section.

(b) In addition to complying with the existing laws and regulations governing the recording of mining locations with the proper local recording officer, the locator of a mining claim within the Papago Indian Reservation shall furnish to the superintendent or other officer in charge of the reservation, within 90 days of such location, a copy of the location notice, together with a sum amounting to 5 cents for each acre and 5 cents for each fractional part of an acre embraced in the location for deposit with the Treasury of the United States to the credit of the Papago Tribe as yearly rental. Failure to make the required annual rental payment in advance each year until an application for patent has been filed for the claim shall be deemed sufficient grounds for invalidating the claim. The payment of annual rental must be made to the superintendent or other officer in charge of the reservation each year on or prior to the anniversary date of the mining location.

(c) Where a mining claim is located within the reservation, the locator shall pay to the superintendent or other officer in charge of the reservation damages for the loss of any improvements on the land in such a sum as may be determined by the Secretary of the Interior to be a fair and reasonable value of such improvements, for the credit of the owner thereof. The value of such improvements may be fixed by the Commissioner, Bureau of Indian Affairs, with the approval of the Secretary of the Interior, and payment in accordance with such determination shall be made within 1 year from date thereof.

(d) At the time of filing with the manager an application for mineral patent for lands within the Papago Indian Reservation the applicant shall furnish, in addition to the showing required under the general mining laws, a statement from the superintendent or other officer in charge of the reservation, that he has deposited with the proper official in charge of the reservation for deposit in the Treasury of the United States to the credit of the Papago Tribe a sum equal to $1 for each acre and $1 for each fractional part of an acre embraced in the application for patent in lieu of annual rental, together with a statement from the superintendent or other officer in charge of the reservation that the annual rentals have been paid each year and that damages for loss of improvements, if any, have been paid.

(e) The Act provides that in case patent is not acquired the sum deposited in lieu of annual rentals shall be refunded. Where patent is not acquired, such sums due as annual rentals but not paid during the period of patent application shall be deducted from the sum deposited in lieu of annual rental. Applications for refund shall be filed in the office of the manager and should follow the general procedure in applications for repayment.

(f) Water reservoirs, charcos, water holes, springs, wells, or any other form of water development by the United States or the Papago Indians shall not be used for mining purposes under the terms of the said Act of August 28, 1937, except under permit from the Secretary of the Interior approved by the Papago Indian Council.

(g) A mining location may not be located on any portion of a 10 acre legal subdivision containing water reservoirs, charcos, water holes, springs, wells or any other form of water development by the United States or the Papago Indians except under a permit from the Secretary of the Interior approved by the Papago Indian Council which permit shall contain such stipulations, restrictions, and limitations regarding the use of the land for mining purposes as may be deemed necessary and proper to permit the free use of the water thereon by the United States or the Papago Indians.

(h) The term "locator" wherever used in this section shall include and mean his successors, assigns, grantees, heirs, and all others claiming under or through him.

Subpart 3826—National Park Service Areas

SOURCE: 35 FR 9747, June 13, 1970, unless otherwise noted.

§ 3826.1 Mount McKinley National Park, Alaska.

§ 3826.1-1 Registration of prospectors and miners.

Before entering the Park for the purpose of prospecting or locating any mining claim under the public land mining laws on lands therein, or prior to engaging in exploration or mining on any mining claim theretofore located, all prospectors and miners shall register with the Superintendent, furnishing the information required on the registration form hereinafter set forth.

(a) *Registration form.* The aforesaid registration form shall be substantially as follows:

Form No. ——————————————
(——————, ———)

REGISTRATION OF PROSPECTORS AND MINERS

UNITED STATES

DEPARTMENT OF THE INTERIOR

National Park Service

Mount McKinley National Park

Pursuant to the regulations of the Secretary of the Interior (36 CFR 7.44) governing the surface use of mineral claims located within the boundaries of the Mount McKinley National Park, Alaska, and to provide for the proper registration of prospectors and miners on lands within said Park, the following information is furnished:

1. Name and address of registrant: ———

——————————————————

——————————————————

NOTE: If registrant is an agent, this fact should be indicated and the name and address of his principal should be furnished in addition to registrant's name and address. If registrant is in charge of a party, then only the chief of the party need register; however, the names and addresses of all members of the party must be listed herein, or on a separate sheet of paper attached hereto.

2. Is registrant a citizen of the United States? ———. If registering for a party in which he is in direct charge, is each member of the party a citizen of the United States? ———. If registrant is an agent, is the principal a citizen of the United States? ———.

3. If this registration is for the purpose of prospecting for minerals prior to the location of a mining claim, state the general area to be covered.

——————————————————

4. If this registration is for the purpose of further prospecting, development, or mining on a mining claim heretofore located, describe the exact location of such claim or claims, furnishing evidence of filing.

——————————————————

5. Type of mineral to be prospected for or mined.

——————————————————

6. Equipment to be used.

____

7. Date prospecting or mining will commence ____________ and expected cessation of operations and departure from the Park. ____________________

The foregoing registration is made this _____ day of __________, 19___, with the understanding that it is good for one year only from the date hereof and must be renewed if activities are to be carried on within the Park after the said expiration date. A copy of this registration, duly accepted and recorded, shall be retained by the registrant at all times as evidence of his compliance with the said regulations of the Secretary of the Interior.

____

(Signature of registrant)

Accepted and recorded:

____

Superintendent,
Mount McKinley National Park

§ 3826.1–2 Surface use of mineral land locations.

(a) (1) The surface use of mining claims shall be restricted to purposes of mineral exploration and development unless other uses of the surface are authorized, in writing, by the Regional Director.

(b) Prospectors and miners may open or construct roads or vehicle trails after first obtaining a permit therefor from the Regional Director. Applications for such permits may be made to the Superintendent. Each such application shall be accompanied by a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail.

(c) Timber may be cut and removed from a mining claim or access road with the prior permission of the Superintendent, who shall designate the timber which may be cut and removed. All slash, brush, or debris resulting from the cutting of timber shall be disposed of by the prospector or miner in such manner and at such times as may be designated by the Superintendent.

§ 3826.2 Olympic National Park.

(a) By the Act of Congress approved June 29, 1938 (52 Stat. 1241; 16 U.S.C. 251–255), the Mount Olympus National Monument was abolished and certain described lands, including the lands in the Monument, were reserved, withdrawn from disposal, and dedicated and set apart as a public park to be known as the Olympic National Park. The act provides that valid existing claims shall not be affected thereby.

(b) Section 2 of the Act provides: That in the areas of said park lying east of the range line between ranges 9 and 10 and north of the seventh standard parallel, and east of the range line between ranges 4 and 5 west, Williamette meridian, all mineral deposits of the classes and kinds now subject to location, entry, and patent under the mining laws of the United States shall be, exclusive of the land containing them, subject to disposal under such laws for a period of five years from the date of approval of this Act, with rights of occupation and use of so much of the surface of the land as may be required for all purposes reasonably incident to the mining or removal of the minerals and under such general regulations as may be prescribed by the Secretary of the Interior.

§ 3826.2–1 Mining locations during 5-year period.

Under the provisions of section 2 of the Act the lands within the area described in that section are, for a period of 5 years from the date of the act, open to prospecting for the kinds of mineral subject to location under the United States mining laws and upon discovery of any such mineral, locations may be made in accordance with the provisions of the mining laws and regulations thereunder. Such locations duly made within the 5-year period will carry all the rights and incidents of mining locations, except that they will give to the locator no title to the land within their boundaries, or claim thereto, except the right to occupy and use so much of the surface of the land as required for all purposes reasonably necessary to mine and remove the minerals, such occupation and use to be under general regulations prescribed by the Secretary of the Interior. No prospecting may be done or locations made on the land after the expiration of the 5-year period from the date of this act but the right to remove mineral deposits from valid locations made during the 5-year period may be maintained thereafter by complying with the requirements of the United States mining laws and the regulations in this subpart.

§ 3826.2-2 Cutting of timber.

The locator of a mining claim within the area described in section 2 of the Act may cut timber within the boundaries of his claim for mining and domestic uses only with the permission of the superintendent of the park or his representative who will designate the timber to be cut All slash, brush or debris resulting from the cutting of timber upon mining claims shall be disposed of by the locator in such manner and at such time as may be designated by the National Park Service officer in charge so as to prevent the creation of fire hazards, or conditions conducive to the development of infestation by timber-destroying insects.

§ 3826.2-3 Construction of trails and roads.

Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining a permit from the Director of the National Park Service. Applications for such permits may be made through the officer in charge of the park upon submitting a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee maintaining the road or trail in a passable condition, satisfactory to the superintendent of the park, so long as it is used by the permittee or his successors.

§ 3826.2-4 Occupation and use of surface.

Occupation and use of the surface of a mining claim is restricted by section 2 of the Act to such as is reasonably incident to the exploration, development and extraction of the minerals in the claim. Accordingly, any locator or patentee of a mining claim located under this section of the act will be entitled to such right. A locator or patentee shall not be entitled to the exclusive use of any hot or mineral springs which may be within the boundaries of his claim, or to any use of such springs for other than mining purposes. Prospectors and miners shall at all times conform to any rules now prescribed or which may be made applicable by the Secretary of the Interior to this park. Special attention is directed to those regulations prohibiting hunting, trapping, and the carrying of firearms within the boundaries of the park.

§ 3826.2-5 Termination of right to use of surface of mining claims.

The right of occupation and use of the surface of the land embraced in the boundaries of a location, entry or patent pursuant to section 2 of the Act will terminate when the minerals are mined out or the claim is abandoned. Any locator of an unpatented claim who fails to perform annual assessment work on his claim for any assessment period will be assumed to have abandoned his claim, and his right of occupation and use of the surface of the claim considered at an end.

§ 3826.2-6 Title to minerals only.

Applications for patents and final certificates issued thereon for mining claims located under section 2 of the Act should be noted "Olympic National Park Lands", and all patents issued for such claims will convey title to the minerals under this act and this subpart.

§ 3826.3 Mining locations in Death Valley National Monument, California.

§ 3826.3-1 Mining.

Mining in Death Valley National Monument is subject to the following regulations, which are prescribed to govern the surface use of claims therein:

(a) The claim shall be occupied and used exclusively for mineral exploration and development and for no other purpose except that upon written permission of an authorized officer or employee of the National Park Service the surface of the claim may be used for other specified purposes, the use to be on such conditions and for such period as may be prescribed when permission is granted.

(b) The owner of the claim and all persons holding under him shall conform to all rules and regulations governing occupancy of the lands within the National Monument.

(c) The use and occupancy of the surface of mining claims as prescribed in paragraphs (a) and (b) of this section shall apply to all such claims located after the date of the Act of June 13, 1933 (48 Stat. 139; 16 U.S.C. 447), within the limits of the National Monument as fixed by Proclamation No. 2028 of February 11, 1933, and enlarged by Proclamation No. 2228 of March 26, 1937, and to all mining claims on lands hereafter included in the National Monument, located after such inclusion, so long as such claims are within the boundaries of said Monument.

(d) Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining written permission from an authorized officer or employee of the National Park Service. Applications for permits shall be accompanied by a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee's maintaining the road or trail in a passable condition as long as it is used by the permittee or his successors.

(e) From and after the date of publication of this section, no construction, development, or dumping upon any location or entry, lying wholly or partly within the areas set forth in paragraphs (e) (1) to (3) of this section, shall be undertaken until the plans for such construction, development, and dumping, insofar as the surface is affected thereby, shall have been first submitted to and approved in writing by an authorized officer or employee of the National Park Service:

(1) All land within 200 feet of the center-line of any public road.

(2) All land within the smallest legal subdivision of the public land surveys containing a spring or water hole, or within one quarter of a mile thereof on unsurveyed public land.

(3) All land within any site developed or approved for development by the National Park Service as a residential, administrative, or public campground site. Such sites shall include all land within the exterior boundaries thereof as conspicuously posted by the placing of an appropriate sign disclosing that the boundaries of the developed site are designated on a map of the site which will be available for inspection in the office of the Superintendent. If not so posted, such sites shall include all land within 1,000 feet of any Federally owned buildings, water and sewer systems, road loops, and camp tables and fireplaces set at designated camp sites.

§ 3826.3-2 Use of water.

No works or water system of any kind for the diversion, impoundment, appropriation, transmission, or other use of water shall be constructed on or across Monument lands, including mining claims, without a permit approved by an authorized officer or employee of the National Park Service. Application for such permit shall be accompanied by plans of the proposed construction. The permit shall contain the following conditions: (1) No diversion and use of the water shall conflict with the paramount general public need for such water; (2) such water systems shall include taps or spigots at points to be prescribed by the Superintendent, for the convenience of the public; and (3) all appropriations of water, in compliance with the State water laws, shall be made for public use in the name of the United States and in accordance with instructions to be supplied by an authorized officer or employee of the National Park Service.

§ 3826.3-3 Permits.

Application for any permit required by this section shall be made through the Superintendent of the Monument.

§ 3826.3-4 Filing of copies of mining locations.

From and after the publication of this paragraph, in order to facilitate the administration of the regulations in this part, copies of all mining locations filed in the Office of the County Recorder shall be furnished to the office of the Superintendent, Death Valley National Monument, by the person filing the mining location in his own behalf or on behalf of any other person.

§ 3826.4 Glacier Bay National Monument, Alaska.

§ 3826.4-1 Mining locations.

(a) Under the Act of June 22, 1936 (49 Stat. 1817), the lands in the Glacier Bay National Monument, reserved by proclamation of February 26, 1925 (43 Stat. 1988), or as it may be extended are open to prospecting for the kinds of mineral now subject to location under the United States mining laws, and, upon discovery of any such mineral, locations may be made in accordance with the provisions of the mining laws and regulations thereunder. Such locations, duly made, will carry all the rights and incidents of mining locations, except that they will give to the locator no title to the land within their boundaries or claim thereto except the right to occupy and use so much of the surface of the land as required for all purposes reasonably necessary to mine and remove the minerals, such occupation and use to be under general regulations prescribed by the Secretary of the Interior.

(b) The owner of a mining location may cut such timber within the boundaries of his claim as is necessary for mining purposes. Prospectors may cut timber for their necessary mining and domestic uses only with the permission of the custodian of the monument or his representative who will designate the timber to be cut. All slash, brush or debris resulting from the cutting of timber upon mining claims or by prospectors shall be disposed of by the claimant or prospector in such manner and at such time as may be designated by the National Park Service officer in charge so as to prevent the creation of fire hazards, or conditions conducive to the development of infestation by timber-destroying insects.

(c) Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining a permit from the Director of the National Park Service. Applications for such permits may be made through the officer in charge of the monument upon submitting a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee maintaining the road or trail in a passable condition so long as it is used by the permittee or his successors.

(d) Occupation and use of the surface of an unpatented mining claim is restricted by the general law to such as is reasonably incident to the exploration, development and extraction of the minerals in the claim. Accordingly, any locator or patentee of a mining claim located under this act will be entitled to such right. Upon written permission of the Director of the National Park Service or his representative, the surface of such claim may be used for other specified purposes, the use to be on such conditions and for such period as may be prescribed when permission is granted.

(e) Prospectors and miners shall at all times conform to any rules prescribed or which may be made applicable by the Director of the National Park Service to the national monument.

(f) The Park regulations for the protection of wildlife provide:

> The national monument is a sanctuary for wild life of every sort, and all hunting, or the killing, wounding, frightening, capturing or attempting to capture at any time of any wild bird or animal, except dangerous animals when it is necessary to prevent them from destroying human lives or inflicting personal injury, is prohibited.
>
> Firearms, traps, seines, and nets are prohibited within the boundaries of the monument, except upon written permission of the custodian or his representative.

(g) The right of occupation and use of the surface of the land embraced in the boundaries of a location, entry or patent pursuant to the act of June 22, 1936, will terminate when the minerals are mined out or the claim is abandoned. Any owner of an unpatented location who fails to perform annual assessment work on his claim for any assessment period will be assumed to have abandoned his claim and his right of occupation and use of the surface of the claim considered at an end.

(h) Applications for patents and final certificates issued thereon for mining claims in this monument should be noted "Glacier Bay National Monument Lands", and all patents issued for claims under the act will convey title to the minerals only, and contain appropriate reference to the act and the regulations issued thereunder.

§ 3826.5 Organ Pipe Cactus National Monument, Arizona.

By the Act of Congress approved October 27, 1941 (55 Stat. 745; 16 U.S.C. 450z), all mineral deposits of the classes and kinds then subject to location, entry and patent under the United States mining laws within the Organ Pipe Cactus National Monument in Arizona, were made, exclusive of the land containing them, subject to disposal under such laws, with right of occupation and use of so much of the surface of the land as may be required for all purposes reasonably incident to the mining or removal of the minerals and under such general regulations as may be prescribed by the Secretary of the Interior.

§ 3826.5-1 Mining locations.

The lands within the Organ Pipe Cactus National Monument as established by Proclamation No. 2232 dated April 13, 1937 (50 Stat. 1827), are open to prospecting for the kinds of mineral subject to location under the United States mining laws and upon discovery of any such mineral, locations may be made in accordance with the provisions of the mining laws and regulations thereunder. Such locations duly made will carry all the rights and incidents of mining locations, except that they will give to the locator no title to the land within their boundaries, or claim thereto except the right to occupy and use so much of the surface of the land as required for all purposes reasonably necessary to mine and remove the minerals.

§ 3826.5-2 Occupation and use of surface.

Occupation and use of the surface of a mining claim is restricted by the act to such as is reasonably incident to the exploration, development and extraction of the minerals in the claim. Accordingly, any locator or patentee of a mining claim located under this act will be entitled to such right. Prospectors and miners shall at all times conform to any rules now prescribed or which may be made applicable by the Secretary of the Interior to this monument. Special attention is directed to those regulations prohibiting hunting, trapping, and the carrying of firearms within the boundaries of the monument.

§ 3826.5-3 Termination of right to use of surface of mining claims.

The right of occupation and use of the surface of the land embraced in the boundaries of a location, entry or patent pursuant to this act will terminate when the minerals are mined out or the claim is abandoned.

§ 3826.5-4 Title to minerals only.

Applications for patents and final certificates issued thereon for mining claims located under the act should be noted "Oregon Pipe Cactus National Monument Lands," and all patents issued for such claims will convey title to the minerals only, and contain appropriate reference to the act and these regulations.

§ 3826.5-5 Destroying vegetation prohibited.

The locator of a mining claim within the monument area shall refrain from destroying or disturbing vegetation within the boundaries of his claim except as is necessary for the proper development thereof for mining purposes.

§ 3826.5-6 Construction of trails and roads.

Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining a permit from the Director of the National Park Service. Applications for such permits may be made through the officer in charge of the monument upon submitting a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee maintaining the road or trail in a passable condition, satisfactory to the officer in charge, so long as it is used by the permittee or his successors.

§ 3826.5-7 Lands containing certain features not subject to location.

Lands containing springs, wells, water holes, other sources of water supply, monument headquarters, and recreation areas are not subject to location.

Subpart 3827—King Range National Conservation Area

AUTHORITY: Sec. 5 of the King Range Conservation Area Act (16 U.S.C. 460y).

SOURCE: 41 FR 15852, Apr. 15, 1976, unless otherwise noted.

§ 3827.0-1 Purpose.

These regulations set forth rules and procedures for prospecting, location of a mining claim, annual assessment work, exploration and development and other mining operations on lands within the Area so as to minimize adverse environmental impacts, protect the scenic and esthetic values against undue impairment and assure against pollution of the streams and waters within the Area.

§ 3827.0-3 Authority.

(a) The Act of October 21, 1970 (16 U.S.C. 460-y), affirms the applicability of the United States mining laws to the federally owned lands within the Area. It also authorizes the Secretary of the Interior to prescribe regulations under which activities under the mining laws and patents issued pursuant to it shall be subject.

(b) Section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) authorizes and directs that, to the fullest extent possible, the policies, regulations and laws of the United States shall be interpreted and administered in accordance with the policies of that Act.

§ 3827.0-5 Definitions.

(a) The term "Area" in this subpart means those lands and boundaries described in Vol. 39, No. 189, FR p. 34693 of September 27, 1974 which the Secretary of the Interior established as the King Range National Conservation Area and any additions thereto.

(b) *"Mining claim"* as used in this subpart means any unpatented claim, millsite, or unpatented tunnel site authorized by the Mining Law of 1872, as amended (30 U.S.C. 22 et seq.).

(c) *"Casual use"* as used in this subpart means activity which is limited to practices which ordinarily lead to only negligible disturbance or damage to lands, resources, and improvements, and does not threaten public health and safety. For example, activities which do not involve cutting of vegetation, use of heavy equipment or explosives and which do not involve vehicle movement except over established roads and trails are "casual use".

(d) *"Plan of operation"* as used in this subpart means an application for authorization containing information called for in this subpart to conduct activities under the United States mining laws.

(e) *"Primitive Areas"*. Natural, wild and undeveloped areas and settings essentially removed from the effects of civilization where the natural environment has not been disturbed by commercial utilization and the areas are without mechanized transportation.

§ 3827.0-7 Scope.

(a) All prospecting commenced or conducted, and all mining claims located within the boundaries of the area after October 21, 1970, are subject to the regulations in this subpart.

(b) Rights of owners of mining claims valid on October 21, 1970, and thereafter maintained as valid mining claims are not limited or restricted by the regulations of this subpart.

(c) Any patent issued on any mining claim located after October 21, 1970, shall continue to be subject to the regulations in this subpart. This provision shall be incorporated in such patent.

§ 3827.1 Plan of operation.

(a) Prior to the commencement of any prospecting, location of a mining claim, annual assessment work, exploration and development or other mining operations any of which would involve more than casual use as determined by the Secretary of the Interior within the Area defined above, a plan of operation must be filed and approved by the authorized officer.

(b) The plan of operation shall include:

(1) A copy of all notices of mining location and notices of assessment work of the mining claims involved in the plan;

(2) The name and address of the operator(s) and the owner(s) if operations are to be conducted by other than the owner(s). If any of the foregoing are other than individual proprietors, the names and addresses of the principal officers of the business entity and the person(s) designated to represent such entity with the Department of the Interior shall be included;

(3) A description sufficient to identify the area or areas on the ground within which the operations are being conducted or are to be conducted, and the estimated period of activity;

(4) A map or sketch of access routes used or to be used and the description of the means of transportation used or to be used, submitted in compliance with the provisions of § 3827.1-1(d) of this subpart;

(5) A map or sketch showing the location of existing and proposed roads within mining claims, a description of the type and standard of such existing and proposed roads, and a description of the means of transportation used or to be used;

(6) A list of equipment and a description of facilities used or to be used in the operations;

(7) A description of the methods of operation used or to be used;

(8) A map or sketch showing the location and size of areas upon which it is expected vegetation or soil will be distributed;

(9) A description of the effects the operations are having or may have upon the environment and forest resources; and

(10) A description of the measures used or to be used to minimize the adverse environmental impacts of the operations, including the measures to be taken to meet the requirements of § 3827.2 of this subpart.

(c) The plan of operations shall cover the requirements set forth in paragraph (a) of this section, for the entire operation for the full estimated period of activity. However, if the development of a plan for an entire operation is not possible at the time of preparation of a plan, the operator shall file an initial plan setting forth his proposed operation to the degree reasonably foreseeable at that time, and shall thereafter file a supplemental plan or plans whenever it is proposed to undertake any operations not covered by the initial plan.

(d) At any time during operations under an initial or supplemental plan of operation if there are indications of significant adverse impacts that were not anticipated at the time the plan was prepared and approved, the authorized officer may, after discussion with the operator, serve written notice describing the changed conditions or unforeseen environmental circumstances occurring or about to occur and require the operators to submit a proposed modification to the initial or supplemental plan detailing the means of minimizing unforeseen significant adverse environmental impacts. The decision of the authorized officer to modify a plan is subject to appeal, in accordance with 43 CFR 4.411.

(e) Determination as to whether an environmental impact statement will be prepared will be on a case-by-case basis and will follow the Guidelines of the Council on Environmental Quality (40 CFR Part 1500), with special consideration given to lands identified as "primitive" under the King Range Management Program.

(f) The existence of an approved plan of operation for prospecting or location of a claim does not preclude the authorized officer from denying approval of plans for subsequent exploration or development of that claim upon a finding that such operation will unduly impair environmental values of the area.

§ 3827.1-1 Approval; access; inspection.

(a) *Review of plan.* No operations, except those determined to be "casual use" as defined herein, shall be conducted unless they are in accordance with an approved plan of operation. A proposed plan of operation shall be submitted to the authorized officer, who shall promptly acknowledge receipt thereof to the operator. Within thirty (30) days of such receipt, the authorized officer shall:

(1) Notify the operator that the plan of operation is approved or rejected; or

(2) Notify the operator of any changes in, or additions to, the plan of operations deemed necessary to meet the purpose of the regulations in this part; or

(3) Notify the operator that the plan is being reviewed, but that more time, not to exceed an additional sixty (60) days, is necessary to complete such review, setting forth the reasons why additional time is needed. However, days during which the area of operations is inaccessible for inspection shall not be included when computing the sixty (60) day period; or

(4) Notify the operator that the plan cannot be approved until a final environmental statement has been prepared and filed with the Council on Environmental Quality as provided in § 3827.1-1(d) hereof.

(b) Appeal from rejection. Any rejection under § 3827.1-1(a)(1) hereof shall afford a right of appeal in accordance with 43 CFR 4.411.

(c) *Supplemental plan.* A supplemental plan or plans of operations provided for in § 3827.1-1(b) of this subpart and a modification of an initial or supplemental plan as provided for in § 3827.1-1(c) of this Subpart shall be subject to approval in the same manner as the initial plan of operations.

(d) *Access.* An operator shall be entitled to access in connection with operations but no road or other means of access, including but not limited to landing areas for aircraft, shall be constructed or improved until the operator has received authorization in writing from the authorized officer. Application for such access shall be filed in the appropriate district office of the Bureau of Land Management and shall include a description of the type and standard of the proposed means of access, a plat showing the proposed route of access, and a description of the means of transportation to be used. Authorization for such access shall specify the location of the access route, design standards, means of transportation, and other conditions reasonably necessary to protect the environment and forest resources, including, but not limited to, vegetative screening and other measures to protect scenic values and to insure against erosion and water or air pollution. Any access granted on lands identified as "primitive areas" under the King Range Management Program shall be limited to non-mechanized means, wherever necessary in the discretion of the Secretary, to preserve environmental, primitive and scenic values.

(e) *Inspection.* Operations are subject to inspection to determine if the operator is complying with the regulations in this part and an approved plan of operations.

§ 3827.2 Requirements for environmental protection.

All plans of operations shall contain appropriate terms and conditions for the protection of the environment including but not limited to stipulations covering air quality, water quality, solid wastes, scenic values, fishery habitat, roads, and surface reclamation and rehabilitation.

§ 3827.3 Performance bonds.

(a) To assure that an operator will faithfully comply with the regulations in this part and adhere to an approved plan of operations, a performance bond in a minimum amount of $100 will be required prior to approval of each plan of operations except where only prospecting is involved and there is no surface disturbance. In lieu of a performance bond, the operator may deposit into a Federal depository, as directed by the Bureau of Land Management, and maintain therein, cash in an amount equal to the required amount of the bond or negotiable securities of the United States having market value at the time of deposit of not less than the required dollar amount of the bond. A blanket bond covering nationwide or statewide operations may be furnished if the terms and conditions thereof are sufficient to comply with the regulations in this part.

(b) In determining the amount of the bond, consideration will be given to the nature of the reclamation and restoration requirements and the estimated costs of reclamation and restoration in the event that the operator forfeits his performance bond. This consideration will include (1) the size of the operations; (2) the estimated damage to the environment and the Area if the operator fails to comply with the regulations in this part or fails to adhere to the approved plan of operations; (3) the estimated cost of stabilizing, rehabilitating and restoring the area of operations; and (4) the type and amount of access to be constructed in connection with operations.

(c) In the event that an initial plan of operations is supplemented or modified in accordance with § 3827.1-1 (b) and (c) of this subpart, the authorized officer will review the initial performance bond for adequacy and, if necessary, will adjust the performance bond to conform to the plan of operations as supplemented or modified.

(d) When the operations have been conducted and completed in accordance with the regulations in this subpart and the approved plan of operations, the authorized officer will notify the operator that the period of liability under the bond has terminated.

§ 3827.4 Use of mining claims restricted, surface resources.

Restrictions on the use of mining claims in addition to the regulations in this subpart are provided in 30 U.S.C. 611 and the regulations in 43 CFR 3712.1(a).

§ 3827.5 Noncompliance.

If an operator fails to comply with the regulations or his approved plan of operations, the authorized officer shall serve a notice of noncompliance upon the operator or his agent in person or by certified mail. Such notice shall describe the noncompliance and shall specify the action necessary to comply and the time within which such action must be completed, generally not to exceed thirty (30) days. The authorized officer shall require immediate suspension of operations if noncompliance is causing environmental damage.

§ 3827.6 Trespass.

Any mining operations conducted on lands within the Area without an approved plan of operations shall constitute a trespass.

PART 3830—LOCATION OF MINING CLAIMS

Subpart 3831—Rights to Mineral Lands

Sec.

3831.1 Manner of initiating rights under locations.

Subpart 3832—Who May Make Locations

3832.1 Qualifications.

Subpart 3833—Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention to Hold Mining Claims, Mill or Tunnel Sites

3833.0-1 Purpose.
3833.0-2 Objectives.
3833.0-3 Authority.
3833.0-5 Definitions.
3833.1 Recordation of mining claims.
3833.1-1 Manner of recordation—National Park System units established before September 28, 1976.
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Subpart 3831—Rights to Mineral Lands

§ 3831.1 Manner of initiating rights under locations.

Rights to mineral lands, owned by the United States, are initiated by prospecting for minerals thereon, and, upon the discovery of minerals, by locating the lands upon which such discovery has been made. A location is made by (a) staking the corners of the claim, except placer claims described by legal subdivision where State law permits locations without marking the boundaries of the claims on the ground, (b) posting notice of location thereon, and (c) complying with the State laws, regarding the recording of the location in the county recorder's office, discovery work, etc. As supplemental to the United States mining laws there are State statutes relative to location, manner of recording of mining claims, etc., in the State, which should also be observed in the location of mining claims. Information as to State laws can be obtained locally or from State officials.

[38 FR 24650, Sept. 10, 1973]

Subpart 3832—Who May Make Locations

§ 3832.1 Qualifications.

Citizens of the United States, or those who have declared their intention to become such, including minors who have reached the age of discretion and corporations organized under the laws of any State, may make mining locations. Agents may make locations for qualified locators.

[35 FR 9750, June 13, 1970]

Subpart 3833—Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention to Hold Mining Claims, Mill or Tunnel Sites

SOURCE: 42 FR 5300, Jan. 27, 1977, unless otherwise noted.

§ 3833.0-1 Purpose.

One purpose of these regulations is to establish procedures for the recordation in the proper BLM office of unpatented mining claims, mill sites, or tunnel sites on Federal lands, and for the filing in the same office of evidence of performance of annual assessment work or of a notice of intention to hold an unpatented mining claim. Another purpose is to notify the proper BLM office of the transfer of an interest in unpatented mining claims, mill sites or tunnel sites.

§ 3833.0-2 Objectives.

An objective of these regulations is to determine the number and location of unpatented mining claims, mill sites, or tunnel sites located on Federal lands to assist in the management of those lands and the mineral resources therein. Other objectives are to remove the cloud on the title to these lands because they are subject to mining claims that may have been abandoned and to keep the BLM abreast of transfers of interest in unpatented mining claims, mill sites or tunnel sites. These regulations are not intended to supersede or replace existing recording requirements under State law, except when specifically changed by the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), and are not intended to make the BLM office the official recording office for all ancillary documents (wills, liens, judgments, etc.) involving an unpatented mining claim, mill site or tunnel site.

§ 3833.0-3 Authority.

(a) Subsections (a) and (b) of section 314 of the Act require the recordation of unpatented mining claims and the filing of information concerning annual assessment work performed or a notice of intention to hold such a claim in the proper BLM office within specified time periods. Subsection (c) sets forth the consequences of the failure to file such information or documents within the time limits prescribed.

(b) Section 8 of the Act of September 28, 1976 (16 U.S.C. 1901-1912), requires that all unpatented mining claims within the boundaries of the National Park System shall be recorded with the Secretary within one year after the date of the Act and provides penalties for failure to record.

(c) Section 2319 of the Revised Statutes (30 U.S.C. 22) provides that the exploration, location, and purchase of valuable mineral deposits shall be "under regulations prescribed by law," and section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), provides that those regulations will be issued by the Secretary.

(d) The Secretary has general responsibility and authority concerning public lands under 43 U.S.C. 2 and section 310 of the Act.

(e) The Act of August 31, 1951 (31 U.S.C. 483a) and section 304(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734).

[42 FR 5300, Jan. 27, 1977, as amended at 44 FR 9722, Feb. 14, 1979]

§ 3833.0-5 Definitions.

As used in this subpart:

(a) "The Act" means the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579; 90 Stat. 2743).

(b) "Unpatented mining claim" means a lode mining claim or a placer mining claim located under the General Mining Law of 1872, as amended (30 U.S.C. 21-54), for which a patent under 30 U.S.C. 29 and 34 CFR Part 3860 has not been issued.

(c) "Mill site" means any land located under 30 U.S.C. 42.

(d) "Tunnel site" means a tunnel located pursuant to 30 U.S.C. 27.

(e) "Owner" means the person who is the holder of the right to sell or transfer all or any part of the unpatented mining claim, mill or tunnel site. The owner shall be identified in the instruments required by these regulations by a notation on those instruments.

(f) "Federal lands" means any lands or interest in lands owned by the United States, except lands within units of the National Park System, which are subject to location under the General Mining Law of 1872, supra, including, but not limited to, those lands within forest reservations in the National Forest System and wildlife refuges in the National Wildlife Refuge System.

(g) "Proper BLM office" means the Bureau of Land Management office listed in § 1821.2-1(d) of this title as having jurisdiction over the area in which the claims or sites are located.

(h) "Date of location" or "located" means the date determined by State law in the local jurisdiction in which the unpatented mining claim, mill or tunnel site is situated.

(i) "Copy of the official record of the notice of certificate of location" means a legible reproduction or duplicate, except microfilm, of the original instrument of recordation of an unpatented mining claim, mill or tunnel site which was or will be filed in the local jurisdiction where the claim or site is located or other evidence, acceptable to the proper BLM office, of such instrument of recordation. It also includes an exact reproduction, duplicate or other acceptable evidence, except microfilm, of an amended instrument which may change or alter the description of the claim or site.

[42 FR 5300, Jan. 27, 1977, as amended at 44 FR 9722, Feb. 14, 1979]

§ 3833.1 Recordation of mining claims.

§ 3833.1-1 Manner of recordation—National Park System units established before September 28, 1976.

Any unpatented mining claim, mill site or tunnel site in any National Park System unit in existence on September 28, 1976, which was not recorded on or before September 28, 1977, in accordance with the Notice of October 20, 1976 [41 FR 46357] or 36 CFR 9.5 is, pursuant to section 8 of the Act of September 28, 1976 (16 U.S.C. 1907), conclusively presumed to be abandoned and shall be void.

[44 FR 20429, Apr. 5, 1979]

§ 3833.1-2 Manner of recordation—Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands, excluding lands within units of the National Park System established before September 28, 1976, but including lands within a national monument administered by the United States and Fish and Wildlife Service or the United States Forest Service, shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. If state law does not require the recordation of a notice or certificate of location containing the information in paragraph (c) of this section shall be filed. Where the claim so recorded lies within a unit of the National Park System, a copy of the documents filed shall be provided to the Superintendent of the appropriate unit by the Bureau of Land Management.

(b) The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site filed under state law or, if the state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section. Where the claim so recorded lies within a unit of the National Park System, a copy of the documents filed shall be provided to the Superintendent of the appropriate unit by the Bureau of Land Management.

(c) The copy of the notice or certificates filed in accordance with paragraphs (a) and (b) of this section shall be supplemented by the following additional information unless it is included in the copy:

(1) The name or number of the claim or site, or both, if the claim or site has both;

(2) The name and current mailing address, if known, of the owner or owners of the claim or site;

(3) The type of claim or site;

(4) The date of location;

(5) For all claims or sites located on surveyed or unsurveyed lands, a description shall be furnished. This description shall recite, to the extent possible, the section(s), the approximate location of all or any part of the claim or site to within a 160 acre quadrant of the section (quarter section) or sections, if more than one is involved. In addition, there must be furnished the township, range, meridian and State obtained from an official survey plat or other U.S. Government map showing either the surveyed or protracted U.S. Government grid, whichever is applicable;

(6) For all claims or sites located on surveyed or unsurveyed land, either a topographic map published by the U.S. Geological Survey on which there shall be depicted the location of the claim or site, or a narrative or sketch describing the claim or site with reference by appropriate tie to some topographic, hydrographic or man-made feature. Such map, narrative description or sketch shall set forth the boundaries and positions of the individual claim or site with such accuracy as will permit the authorized officer of the agency administering the lands or the mineral interests in such lands to identify and locate the claim on the ground. More than one claim or site may be shown on a single map or described in a single narrative or sketch if they are located in the same general area, so long as the individual claims or sites are clearly identified; and

(7) In place of the requirements of paragraphs (c)(5) and (6) of this section, an approved mineral survey may be supplied.

(8) Nothing in the requirements for a map and description found in this section shall require the owner of a claim or site to employ a professional surveyor or engineer.

(d) Each claim or site filed shall be accompanied by a one time $5 service fee which is not returnable. A notice or certificate of location shall not be accepted if it is not accompanied by the service fee and shall be returned to the owner.

[42 FR 5300, Jan 27, 1977, as amended at 44 FR 9722, Feb. 14, 1979; 44 FR 20430, Apr. 5, 1979]

§ 3833.1-3 When recordation not required.

If the owner of an unpatented mining claim or mill site had on file in the proper BLM office on October 21, 1976, an application for a mineral patent which contains the documents and information required in § 3833.1-2 of this title, except if the application is for a patent for a placer claim which is located on surveyed lands and conforms to legal subdivisions, such applicant need not comply with the requirements of § 3833.1-2(c)(6) of this title, or if the owner of an unpatented mining claim or mill site located on or before October 21, 1976, files in the proper BLM office an application for a mineral patent, as described above, on or before October 22, 1979, the filing of the application shall be deemed full compliance with the recordation requirements of section 314(b) of the Act and the owner of that claim or site shall be exempt from the filing requirements of § 3833.1. For purposes of complying with the requirement of § 3833.2-1(a) of this title, upon notification to the claimant, the date of recordation in the proper BLM office shall be October 21, 1976, for claims and sites included in mineral patent applications on file as of that date. The date on which the application was actually filed shall be the date of recordation for all other claims and sites.

[44 FR 9722, Feb. 14, 1979]

§ 3833.2 Evidence of assessment work-notice of intention to hold a claim or site.

[44 FR 9723, Feb. 14, 1979]

§ 3833.2-1 When filing required.

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, which ever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

(b)(1) Except as provided in paragraph (b)(2) of this section, the owner of an unpatented mining claim, mill site or tunnel site located within any unit of the National Park System shall file before October 22, 1979, and on or before December 30 of each calendar year after the year of recording (See 36 CFR 9.5), a notice of intention to hold the mining claim, mill site or tunnel site. Such notice shall be in the form presecribed by § 3833.2-3 of this title and shall be filed with the proper BLM office. A copy of each such filing shall be provided to the Superintendent of the appropriate unit by the Bureau of Land Management.

(2) Where a claimant has received a permit under 36 CFR 9.5 to do assessment work on a claim in a unit of the National Park System, the claimant may file with the Bureau of Land Management in lieu of the notice required by paragraph (b)(1) of this section, evidence of assessment work in the form prescribed in § 3833.2-2 of this title. A copy of such filing shall be provided to the Superintendent of the appropriate unit by the Bureau of Land Management.

(c) The owner of an unpatented mining claim located on Federal lands excluding lands within a unit of the National Park System, but including lands within a national monument administered by the United States Fish and Wildlife Service or the United States Forest Service, after October 21, 1976, shall, on or before December 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim.

(d) The owner of a mill or tunnel site located on Federal lands, excluding lands within a unit of the National Park System but including lands within a national monument administered by the United States Fish and Wildlife Service or the United States Forest Service, shall file in the proper BLM office on or before December 30 of each year following the year of recording pursuant to § 3833.1-2 of this title, a notice of intention to hold the mill or tunnel site.

[44 FR 9723, Feb. 14, 1979, as amended at 44 FR 20430, Apr. 5, 1979]

§ 3833.2-2 Form—evidence of assessment work.

Evidence of annual assessment work shall be in the form of either:

(a) An exact legible reproduction or duplicate, except microfilm, of the affidavit of assessment work performed which was or will be filed for record pursuant to section 314(a) of the Act in the local jurisdiction of the State where the claim or group of claims is located and recorded setting forth the following additional information:

(1) The serial number assigned to each claim by the authorized officer upon filing of the notice or certificate of location or patent application in the proper BLM office. Filing the serial number shall comply with the requirement in the act to file an additional description of the claim.

(2) Any change in the mailing address, if known, of the owner or owners of the claim or claims; or

(b) An exact legible reproduction or duplicate, except microfilm, of the detailed report concerning geological, geochemical and geophysical surveys provided for by the Act of September 2, 1958 (30 U.S.C. 28-1) and filed for record pursuant to section 314(a)(1) of the Act in the local jurisdiction of the State where the claim or group of claims is located and recorded setting forth the following additional information:

(1) The serial number assigned to each claim by the authorized officer upon filing in the proper BLM office of a copy of the official record of the notice or certificate of location or patent application; and

(2) Any change in the mailing address, if known, of the owner or owners of the claim.

[42 FR 5300, Jan. 27, 1977, as amended at 44 FR 9723, Feb. 14, 1979]

§ 3833.2-3 Form—notice intention to hold claim or site.

(a) A notice of intention to hold a mining claim or group of mining claims shall be in the form of either (1) an exact legible reproduction or duplicate, except microfilm, of a letter signed by the owner of a claim or his agent filed for record pursuant to section 314(a)(1) of the Act in the local jurisdiction of the State where the claim is located and recorded setting forth the following information:

(i) The serial number assigned to each claim by the authorized officer upon filing in the proper BLM office of a copy of the notice or certificate of location. Filing the serial number shall comply with the requirement in the act to file an additional description of the claim;

(ii) Any change in the mailing address, if known, of the owner or owners of the claim;

(iii) A statement that the claim is held and claimed by the owner(s) for the valuable mineral contained therein;

(iv) A statement that the owner(s) intend to continue development of the claim; and

(v) The reason that the annual assessment work has not been performed or an affidavit of assessment work performed or a detailed report of geological, geochemical or geophysical survey under § 3833.2-2, has not been filed or

(2) The decision on file in the proper BLM office which granted a deferment of the annual assessment work required by 30 U.S.C. 28, so long as the decision is in effect on the date required for filing a notice of intention to hold a mining claim under § 3833.2-1 of this title or a petition for deferment, a copy of which has been recorded with the appropriate local office, which has not been acted on by the authorized officer.

(b) A notice of intention to hold a mill or tunnel site(s) shall be in the form of a letter signed by the owner or owners of such sites or their agent setting forth the following information:

(1) The serial number assigned to each site by the authorized officer upon filing in the proper BLM office of a copy of the official record of the notice or certificate of location;

(2) Any change in the mailing address, if known, of the owner or owners of the site(s); and

(3) In the case of a mill site, a statement that a claim-related site will continue to be used for mining or milling purposes or that an independent mill site will continue to be used for the purposes of a quartz mill or reduction works; or

(4) In the case of a tunnel site, a statement that the owner(s) will continue to prosecute work on the tunnel with reasonable diligence for the discovery or development of the vein or lode.

[44 FR 9723, Feb. 14, 1979]

§ 3833.2-4 When evidence or notice not required.

Evidence of annual assessment work performed or a notice of intention to hold a mining claim need not be filed on unpatented mining claims or mill sites for which application for mineral patent which complies with 43 CFR Part 3860 has been filed and final certificate has been issued. (See 43 CFR 3851.5). The filing of an application and issuance of the final certificate will be deemed full compliance with the requirements of section 314(a) of the Act and the owner of that claim or site shall be exempt from the filing requirements of § 3833.2-1.

§ 3833.3 Notice of transfer of interest.

(a) Whenever the owner of an unpatented mining claim, mill site or tunnel site, which has been recorded in accordance with § 3833.1-2, sells, assigns, or otherwise conveys all or any part of his interest in the claim, his transferee shall file in the proper BLM office within 60 days after the completion of the transfer the following information:

(1) The serial number assigned to the claim by the authorized officer upon filing of a copy of the official record of the notice or certificate of location in the proper BLM office: and

(2) The name and mailing address of the person(s) to whom an interest in the claim has been sold, assigned, or otherwise transferred.

(b) Whenever any person acquires an interest through inheritance in an unpatented mining claim, mill site, or tunnel site recorded in accordance with § 3833.1, he shall file in the proper BLM office within 60 days after completion of the transfer the information required by paragraph (a) of this section.

§ 3833.4 Failure to file.

(a) The failure to file an instrument required by §§ 3833.1-2 (a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void.

(b) The fact that an instrument is filed in accordance with other laws permitting filing or recording thereof and is defective or not timely filed for record under those laws, or the fact that an instrument is filed for record under this subpart by or on behalf of some, but not all of the owners of the mining claim, mill site, or tunnel site, shall not be considered failure to file an instrument under this subpart.

[42 FR 5200, Jan. 27, 1977, as amended at 44 FR 9723, Feb. 14, 1979]

§ 3833.5 Effect of recording and filing.

(a) Recordation or application involving an unpatented mining claim, mill site, or tunnel site by itself shall not render valid any claim which would not be otherwise valid under applicable law and does not give the owner any rights he is not otherwise entitled to by law.

(b) Nothing in this subpart shall be construed as a waiver of the assessment work requirements of section 2324 of the Revised Statutes, as amended (30 U.S.C. 28). Compliance with the requirements of this subpart shall be in addition to and not a substitute for compliance with the requirements of section 2324 of the Revised Statutes and with laws and regulations issued by any State or other authority relating to performance of annual assessment work.

(c) Filing of instruments pertaining to mining claims under other Federal law with the BLM or other Federal agency shall not excuse the filings required by this subpart and filings under this subpart shall not excuse the filing of instruments pertaining to mining claims under any other Federal law, except that filing a notice or certificate of location or an affidavit of annual assessment work under this subpart which is marked by the owner as also being filed under the Act of April 8, 1948 (62 Stat. 162) or the Act of August 11, 1955 (30 U.S.C. 621-625), will satisfy the recording requirement for O & C lands under 43 CFR Subpart 3821 and Pub. L. 359 lands under 43 CFR Part 3730, or as provided in § 3833.2-1(b) of this title.

(d) In the case of any action or contest affecting an unpatented mining claim, mill or tunnel site, only those owners who have recorded their claim or site pursuant to § 3833.1-2 or filed a notice of transfer of interest pursuant to § 3833.3, shall be considered by the United States as parties whose rights are affected by such action or contest and shall be personally notified. All methods reasonably calculated to insure that those parties receive actual notice of the action or contest shall be employed. If those methods are not successful, the interested parties shall be notified by publication in accordance with 43 CFR 4.450. Owners who have not recorded a claim or site or filed a notice of transfer shall not be personally served and will be bound by any contest proceeding even though they have not been personally served. This section applies to all unpatented mining claims, mill or tunnel sites located after October 21, 1976, and shall apply to such claims or sites located on or before October 21, 1976, only after they have been recorded pursuant to § 3833.1-2 of this title.

(e) Actual notice of an unpatented mining claim or mill or tunnel site by any employee or officer of the United States shall not exempt the claim or site from the requirements of this subpart.

(f) Failure of the government to notify an owner upon his filing or recording of a claim or site under this subpart that such claim or site is located on lands not subject to location or otherwise void for failure to comply with Federal or State law or regulations shall not prevent the government from later challenging the validity of or declaring void such claim or site in accordance with due process of law.

(g) Any person who files an instrument required by these regulations knowing the same to contain any false, fictitious or fraudulent statement or entry, may be subject to criminal penalties under 18 U.S.C. 1001.

[42 FR 5200, Jan. 27, 1977, as amended at 44 FR 9723, Feb. 14, 1979]

PART 3840—NATURE AND CLASSES OF MINING CLAIMS

Subpart 3840—Types of Claims

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Subpart 3840—Types of Claims

§ 3840.1 Classes of mining claims.

Mining claims are of two distinct classes: lode claims and placers.

[35 FR 9750, June 13, 1970]

Subpart 3841—Lode Claims

SOURCE: 35 FR 9750, June 13, 1970, unless otherwise noted.

§ 3841.1 Lodes located previous to May 10, 1872.

The status of lode claims located or patented previous to May 10, 1872, is not changed with regard to their extent along the lode or width of surface; but the claim is enlarged by 2322 and 2328, R.S. (30 U.S.C. 26, 33), by investing the locator, his heirs or assigns, with the right to follow, upon the conditions stated therein, all veins, lodes, or ledges, the top or apex of which lies inside of the surface lines of his claim.

§ 3841.2 Lodes must not have been adversely claimed.

It is to be distinctly understood that the law limits the possessory right to veins, lodes, or ledges, other than the one named in the original location, to such as were not adversely claimed on May 10, 1872, and that where such other vein or ledge was so adversely claimed at that date the right of the party so adversely claiming is in no way impaired by the act of that date.

§ 3841.3 Discovery.

§ 3841.3-1 Discovery required before location.

No lode claim shall be located until after the discovery of a vein or lode within the limits of the claim, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes, to the exclusion of bona fide prospectors, before sufficient work has been done to determine whether a vein or lode really exists.

§ 3841.3-2 Discovery work.

The claimant should, therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft or run a tunnel or drift to a sufficient depth therein to discover and develop a mineral-bearing vein, lode, or crevice; should determine, if possible, the general course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface.

§ 3841.4 Describing locations.

§ 3841.4-1 Length of lode claims.

From and after May 10, 1872, any person who is a citizen of the United States, or who has declared his intention to become a citizen, may locate, record, and hold a mining claim of 1,500 linear feet along the course of any mineral vein or lode subject to location; or an association of persons, severally qualified as above, may make joint location of such claim of 1,500 feet, but in no event can a location of a vein or lode made after May 10, 1872, exceed 1,500 feet along the course thereof, whatever may be the number of persons composing the association.

§ 3841.4-2 Width of lode claims.

No lode located after May 10, 1872, can exceed a parallelogram 1,500 feet in length by 600 feet in width, but whether surface ground of that width can be taken depends upon the local regulations or State or Territorial laws in force in the several mining districts. No such local regulations or State or Territorial laws shall limit a vein or lode claim to less than 1,500 feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than 50 feet in width unless adverse claims existing on May 10, 1872, render such lateral limitation necessary.

§ 3841.4-3 Extent of surface ground.

With regard to the extent of surface ground adjoining a vein or lode, and claimed for the convenient working thereof, the Act of May 10, 1872, provides that the lateral extent of locations of veins or lodes made after said date shall in no case exceed 300 feet on each side of the middle of the vein at the surface, and that no such surface rights shall be limited by any mining regulations to less than 25 feet on each side of the middle of the vein at the surface, except where adverse rights existing on May 10, 1872, may render such limitation necessary; the end lines of such claims to be in all cases parallel to each other. Said lateral measurements cannot extend beyond 300 feet on either side of the middle of the vein at the surface, or such distance as is allowed by local laws. For example: 400 feet cannot be taken on one side and 200 feet on the other. If, however, 300 feet on each side are allowed, and by reason of prior claims but 100 feet can be taken on one side, the locator will not be restricted to less than 300 feet on the other side; and when the locator does not determine by exploration where the middle of the vein at the surface is, his discovery shaft must be assumed to mark such point.

§ 3841.4-4 Defining of locations.

Section 5 of the Act of May 10, 1872, now section 2324, Revised Statutes (30 U.S.C. 28), requires that "the location must be distinctly marked on the ground so that its boundaries can be readily traced." Locators can not exercise too much care in defining their locations at the outset, inasmuch as section 5 of the Act of May 10, 1872 (17 Stat. 92; 30 U.S.C. 28) requires that all records of mining locations made subsequent to the date of said Act shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located, by reference to some natural object or permanent monument, as will identify the claim.

§ 3841.4-5 Location notice; monumenting.

(a) The location notice should give the course and distance as nearly as practicable from the discovery shaft on the claim to some permanent, wellknown points or objects, such, for instance, as stone monuments, blazed trees, the confluence of streams, point of intersection of well-known gulches, ravines, or roads, prominent buttes, hills, etc., which may be in the immediate vicinity, and which will serve to perpetuate and fix the locus of the claim and render it susceptible of identification from the description thereof given in the record of locations in the district, and should be duly recorded.

(b) In addition to the foregoing data, the claimant should state the names of adjoining claims, or, if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument of stones at each corner of his surface ground, and at the point of discovery or discovery shaft should fix a post, stake, or board, upon which should be designated the name of the lode, the name or names of the locators, the number of feet claimed, and in which direction from the point of discovery, it being essential that the location notice filed for record, in addition to the foregoing description, should state whether the entire claim of 1,500 feet is taken on one side of the point of discovery, or whether it is partly upon one and partly upon the other side thereof, and in the latter case, how many feet are claimed upon each side of such discovery point. As to the importance of monuments, and as to their paramount authority, see the Act of April 28, 1904 (33 Stat. 545; 30 U.S.C. 34), which amended R.S. 2327.

§ 3841.4-6 Recording of location notice.

The location notice must be filed for record in all respects as required by the State or territorial laws, and local rules and regulations, if there by any.

Subpart 3842—Placer Claims

Source: 35 FR 9751, June 13, 1970, unless otherwise noted.

§ 3842.1 Placer claims; general.

§ 3842.1-1 Discovery.

But one discovery of mineral is required to support a placer location, whether it be of 20 acres by an individual, or of 160 acres or less by an association of persons.

§ 3842.1-2 Maximum allowable acreage.

(a) By R.S. 2330 (30 U.S.C. 36), it is declared that no location of a placer claim made after July 9, 1870, shall exceed 160 acres for any one person or association of persons, which location shall conform to the United States surveys.

(b) R.S. 2331 (30 U.S.C. 35) provides that all placer-mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, and such locations shall not include more than 20 acres for each individual claimant.

(c) The foregoing provisions of law are construed to mean that after July 9, 1870, no location of a placer claim can be made to exceed 160 acres, whatever may be the number of locators associated together, or whatever the local regulations of the district may allow; and that from and after May 10, 1872, no location can exceed 20 acres for each individual participating therein; that it, a location by two persons can not exceed 40 acres, and one by three persons can not exceed 60 acres.

§ 3842.1-3 Locations authorized in 10-acre units.

By R.S. 2330 (30 U.S.C. 36), authority is given for subdividing 40-acre legal subdivisions into 10-acre tracts. These 10-acre tracts should be considered and dealt with as legal subdivisions, and an applicant having a placer claim which conforms to one or more of such 10-acre tracts, contiguous in case of two or more tracts, may make entry thereof, after the usual proceedings, without further survey or plat.

§ 3842.1-4 Manner of describing 10-acre units.

A 10-acre subdivision may be described, for instance if situated in the extreme northeast of the section, as the "NE. ¼ of the NE. ¼ of the NE. ¼" of the section, or, in like manner, by appropriate terms, wherever situated; but in addition to this description, the notice must give all the other data required in a mineral application, by which parties may be put on inquiry as to the land sought to be patented. The proofs submitted with applications must show clearly the character and extent of the improvements upon the premises.

§ 3842.1-5 Conformity of placer claims to the public land surveys.

(a) All placer-mining claims located after May 10, 1872, shall conform as near as practicable with the United States system of public-land surveys and the rectangular subdivisions of such surveys, whether the locations are upon surveyed or unsurveyed lands.

(b) Conformity to the public-land surveys and the rectangular subdivisions thereof will not be required where compliance with such requirement would necessitate the placing of the lines thereof upon other prior located claims or where the claim is surrounded by prior locations.

(c) Where a placer location by one or two persons can be entirely included within a square 40-acre tract, by three or four persons within two square 40-acre tracts placed end to end, by five or six persons within three square 40-acre tracts, and by seven or eight persons within four square 40-acre tracts, such locations will be regarded as within the requirements where strict conformity is impracticable.

(d) Whether a placer location conforms reasonably with the legal subdivisions of the public survey is a question of fact to be determined in each case, and no location will be passed to patent without satisfactory evidence in this regard. Claimants should bear in mind that it is the policy of the Government to have all entries whether of agricultural or mineral lands as compact and regular in form as reasonably practicable, and that it will not permit or sanction entries or locations which cut the public domain into long narrow strips or grossly irregular or fantastically shaped tracts. (Snow Flake Fraction Placer, 37 L.D. 250.)

§ 3842.2 Building-stone placers.

The Act of August 4, 1892 (27 Stat. 348; 30 U.S.C. 161), extends the mineral land laws so as to bring lands chiefly valuable for building stone within the provisions of said laws.

(a) Common varieties of building stone are, since the Act of July 23, 1955 (69 Stat. 367; 30 U.S.C. 611) no longer locatable under the mining laws.

(b) Uncommon varieties of building stone continue to be subject to the building stone placer supplement to the mining law, 30 U.S.C. 161.

§ 3842.3 Saline placers.

(a) Under the Act approved January 31, 1901 (31 Stat. 745; 30 U.S.C. 162), extending the mining laws to saline lands, the provisions of the law relating to placer-mining claims are extended to all States so as to permit the location and purchase thereunder of all unoccupied public lands containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, with the proviso, "That the same person shall not locate or enter more than one claim hereunder." The saline placer act was superseded by the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181 et seq.), whereby saline (sodium) deposits were made subject to disposal by leases instead of mining locations.

(b) Rights obtained by location under the placer-mining laws are assignable, and the assignee may make the entry in his own name; so, under this act a person holding as assignee may make entry in his own name: *Provided*, That he has not held under this act, at any time, either as locator or entryman, any other lands; his right is exhausted by having held under this act any particular tract, either as locator or entryman, either as an individual or as a member of an association. It follows, therefore, that no application for patent or entry, made under this act, shall embrace more than one single location.

(c) In order that the conditions imposed by the proviso, as set forth in paragraph (b) of this section, may duly appear, the application for patent must contain or be accompanied by a specific statement by each person whose name appears therein that he never has, either as an individual or as a member of an association, located or entered any other lands under the provisions of this act. The application for patent should also be accompanied by a showing, fully disclosing the qualifications as defined by the proviso, of the applicants' predecessors in interest.

§ 3842.4 Petroleum placers.

The Act of February 11, 1897 (29 Stat. 526), provides for the location and entry of public lands chiefly valuable for petroleum or other mineral oils, and entries of that nature made prior to the passage of said act are to be considered as though made thereunder. This Act was superseded by the Mineral Leasing Act of February 25, 1920 (41 Stat. 437).

Subpart 3843—Tunnel Sites

Source: 35 FR 9752, June 13, 1970, unless otherwise noted.

§ 3843.1 Possessory right of tunnel proprietor.

The effect of R.S. 2323 (30 U.S.C. 27), is to give the proprietors of a mining tunnel run in good faith the possessory right to 1,500 feet of any blind lodes cut, discovered, or intersected by such tunnel, which were not previously known to exist within 3,000 feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on the line thereof and within said distance of 3,000 feet, unless such lodes appear upon the surface or were previously known to exist. The term "face," as used in said sections, is contrued and held to mean the first working face formed in the tunnel, and to signify the point at which the tunnel actually enters cover; it being from this point that the 3,000 feet are to be counted upon which prospecting is prohibited as aforesaid. R.S. 2323 provides: "Failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel."

§ 3843.2 Location of tunnel claims.

To avail themselves of the benefits of this provision of law, the proprietors of a mining tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location by erecting a substantial post, board, or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right; the actual or proposed course or direction of the tunnel, the height and width thereof, and the course and distance from such face or point of commencement to some permanent well-known objects in the vicinity by which to fix and determine the locus in manner heretofore set forth applicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof, by stakes or monuments placed along such lines at proper intervals, to the terminus of the 3,000 feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.

§ 3843.3 Recording of notices.

A full and correct copy of such notice of location defining the tunnel claim must be filed for record with the mining recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or projectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon; the extent of the work performed, and that it is bona fide their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode, or for the discovery of mines, or both, as the case may be. This notice of location must be duly recorded, and, with the said sworn statement attached, kept on the recorder's files for future reference.

Subpart 3844—Millsites

§ 3844.0-3 Authority.

The location and patenting of lands for millsite purposes is authorized by R.S. 2337 as amended by the Act of March 18, 1960. The Act, 30 U.S.C. 42, reads as follows:

> Patents for nonmineral lands.
>
> (a) Where nonmineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such nonadjacent surface ground may be embraced, and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location made of such nonadjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by sections 21-24, 26-28, 29, 30, 33-48, 50-52, and 71-76 of this title for the superficies of the lode. The owner of a quartz mill or reduction works, not owning a mine in connection therewith, may also receive a patent for his mill site, as provided in this section.
>
> (b) Where nonmineral land is needed by the proprietor of a placer claim for mining, milling, processing, beneficiation, or other operations in connection with such claim, and is used or occupied by the proprietor for such purposes, such land may be included in an application for a patent for such claim, and may be patented therewith subject to the same requirements as to survey and notice as are applicable to placers. No location made of such nonmineral land shall exceed five acres and payment for the same shall be made at the rate applicable to placer claims which do not include a vein or lode. (As amended Mar. 18, 1960, Pub. Law 86-390, 74 Stat. 7.)

[35 FR 9752, June 13, 1970]

§ 3844.1 Required use.

A millsite is required to be used or occupied distinctly and explicitly for mining or milling purposes in connection with the lode or placer claim with which it is associated. A custom or independent millsite may be located for the erection and maintenance of a quartz mill or reduction works.

[35 FR 9752, June 13, 1970]

PART 3850—ASSESSMENT WORK

Subpart 3851—Assessment Work; General

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3851.3 Effect of failure to perform assessment work.
3851.4 Failure of a co-owner to contribute to annual assessment work.
3851.5 Assessment work not required after patent certificate.

Subpart 3852—Deferment of Assessment Work

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3852.0-3 Authority.
3852.1 Conditions under which deferment may be granted.
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3852.5 When deferred assessment work is to be done.

Subpart 3851—Assessment Work; General

SOURCE: 35 FR 9753, June 13, 1970, unless otherwise noted.

§ 3851.1 Assessment work.

In order to hold the possessory right to a lode or placer location made after May 10, 1872, not less than $100 worth of labor must be performed or improvements made thereon annually. The period within which the work required to be done shall commence at 12 o'clock meridian on the 1st day of September succeeding the date of location of each claim. Where a number of contiguous claims are held in common, the aggregate expenditure that would be necessary to hold all the claims may be made on any one claim. Cornering locations are held not to be contiguous.

§ 3851.1-1 Expenditures.

The annual expenditure in the amount of $100, required by section R.S. 2324 (30 U.S.C. 28), must be made upon placer as well as lode locations.

§ 3851.2 Inclusion of surveys in assessment work.

(a) In addition to the several types of work that may fulfill the annual labor requirement, the requirement can also be satisfied by conducting geological, geochemical, and geophysical surveys. Pub. L. 85-876, Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1-2). Such surveys must be conducted by qualified experts and verified by a detailed report filed in the county or recording district office in which the claim is located. This report must set forth fully the following:

(1) The location of the work performed in relation to the point of discovery and boundaries of the claim.

(2) Nature, extent and cost of the work performed.

(3) The basic findings of the surveys.

(4) The name, address and professional background of the person or persons conducting the work.

Such surveys may not be applied as labor for more than two consecutive years or for more than a total of five years on any one mining claim. Each survey shall be nonrepetitive of any previous survey of the same claim. Such surveys will not apply toward the statutory provision requiring the expenditure of $500 for each claim for mineral patent.

(b) As used in this section—

(1) The term "geological surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits;

(2) The term "geochemical surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits;

(3) The term "geophysical surveys" means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical difference between rock types or discontinuities in geological formations;

(4) The term "qualified expert" means an individual qualified by education or experience to conduct geological, geochemical, or geophysical surveys, as the case may be.

§ 3851.3 Effect of failure to perform assessment work.

(a) Failure of a mining claimant to comply substantially with the requirement of an annual expenditure of $100 in labor or improvements on a claim imposed by section 2324 of the Revised Statutes (30 U.S.C. 28) will render the claim subject to cancellation.

(b) Failure to make the expenditure or perform the labor required upon a location will subject a claim to relocation unless the original locator, his heirs, assigns, or legal representatives have resumed work after such failure and before relocation.

[37 FR 17836, Sept. 1, 1972]

§ 3851.4 Failure of a co-owner to contribute to annual assessment work.

Upon the failure of any one of several co-owners to contribute his proportion of the required expenditures, the co-owners, who have performed the labor or made the improvements as required, may, at the expiration of the year, give such delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for 90 days; and if upon the expiration of 90 days after such notice in writing, or upon the expiration of 180 days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute his proportion to meet such expenditures or improvements, his interest in the claim by law passes to his co-owners who have made the expenditures or improvements as aforesaid. Where a claimant alleges ownership of a forfeited interest under the foregoing provision, the statement of the publisher as to the facts of publication, giving dates, and a printed copy of the notice published, should be furnished, and the claimant must state that the delinquent co-owner failed to contribute his proper proportion within the period fixed by the statute.

[35 FR 9753, June 13, 1970. Redesignated at 37 FR 17836, Sept. 1, 1972]

§ 3851.5 Assessment work not required after patent certificate.

Annual expenditure is not required subsequent to entry, the date of issuing the patent certificate being the date contemplated by statute.

[35 FR 9753, June 13, 1970. Redesignated at 37 FR 17836, Sept. 1, 1972]

Subpart 3852—Deferment of Assessment Work

SOURCE: 35 FR 9753, June 13, 1970, unless otherwise noted.

§ 3852.0-3 Authority.

The Act of June 21, 1949 (63 Stat. 214; 30 U.S.C. 28b-c), provides for the temporary deferment in certain unavoidable contingencies of the performance of annual assessment work on mining claims held by location in the United States. The relief under this act is in addition to any other relief available under any other act of Congress with respect to the suspension of annual assessment work on mining claims.

§ 3852.1 Conditions under which deferment may be granted.

The deferment may be granted where any mining claim or group of claims in the United States is surrounded by lands over which a right-of-way for the performance of assessment work has been denied or is in litigation or is in the process of acquisition under State law or where other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof.

§ 3852.2 Filing of petition for deferment, contests.

(a) In order to obtain temporary deferment, the claimant must file with the authorized officer of the proper office, a petition in duplicate requesting such deferment. No particular form of petition is required, but the applicant must attach to one copy thereof a copy of the notice to the public required by the act which shows that it has been filed or recorded in the office in which the notices or certificates of location were filed or recorded. The petition and duplicate should be signed by at least one of the owners of each of the locations involved, shall give the names of the claims, dates of location, and the date of the beginning of the one-year period for which deferment is requested. Each petition shall be accompanied by a $10 nonrefundable service charge.

(b) If the petition is based upon the denial of a right-of-way, it must state the nature and ownership of the land or claim thereto over which it is necessary to obtain a right-of-way in order to reach the surrounded claims, and the land description thereof by legal subdivisions if the land is surveyed, and give full details as to why present use of the right-of-way is denied or prevented and as to the steps which have been taken to acquire the right to use it. The petition should state whether any other right-of-way is available and if so, give reasons why it is not feasible or desirable to use that right-of-way.

(c) If the petition is based on other legal impediments, they must be set out and their effect described in detail.

§ 3852.3 Notice of action on petition to be recorded.

The claimant must file or record, in the office in which he filed or recorded his notice of petition, a copy of the order or decision disposing of the petition.

§ 3852.4 Period for which deferment may be granted.

If the showing made is satisfactory, the authorized officer of the Bureau of Land Management will grant a deferment for an initial period not exceeding one year. The period shall begin on the date requested in the petition unless the approval sets a different date. Upon petition, the one year period may be renewed for another year if justifiable conditions exist. If the conditions justifying deferment are removed prior to the specified termination date of the deferment period, the deferment shall automatically be ended as of such earlier date.

§ 3852.5 When deferred assessment work is to be done.

All deferred assessment work may be begun at any time after the termination of the deferment but must be completed not later than the end of the assessment year commencing after the removal or cessation of the causes for the deferment or the expiration of any deferments granted under the act and shall be in addition to the annual assessment work required by law for such year.

PART 3860—MINERAL PATENT APPLICATIONS

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Subpart 3861—Surveys and Plats

SOURCE: 35 FR 9754, June 13, 1970, unless otherwise noted.

§ 3861.1 Surveys of mining claims.

§ 3861.1-1 Application for survey.

The claimant is required, in the first place, to have a correct survey of his claim made under authority of the proper cadastral engineer, such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground. He is required to have a correct survey where patent is applied for and where the mining claim is in vein or lode formation, or covers lands not surveyed in accordance with the U.S. system of rectangular surveys, or where the mining claim fails to conform with the legal subdivisions of the federal surveys. Application for authorization of survey should be made to the appropriate land office (see § 1821.2-1 of this chapter).

[Circ. 2220, 31 FR 16785, Dec. 31, 1966]

§ 3861.1-2 Survey must be made subsequent to recording notice of location.

The survey and plat of mineral claims required to be filed in the proper office with application for patent must be made subsequent to the recording of the location of the claim (if the laws of the State or the regulations of the mining district require the notice of location to be recorded), and when the original location is made by survey of a mineral surveyor such location survey cannot be substituted for that required by the statute, as above indicated. All matters relating to the duties of mineral surveyors, and to the field and office procedure to be observed in the execution of mineral surveys, are set forth in Chapter X of the Manual of Instructions for the Survey of the Public Lands of the United States, 1947.

§ 3861.1-3 Plats and field notes of mineral surveys.

When the patent is issued, one copy of the plat and field notes shall accompany the patent and be delivered to the patentee.

§ 3861.2 Surveys; specific.

§ 3861.2-1 Particulars to be observed in mineral surveys.

(a) The following particulars should be observed in the survey of every mining claim:

(1) The exterior boundaries of the claim, the number of feet claimed along the vein, and, as nearly as can be ascertained, the direction of the vein, and the number of feet claimed on the vein in each direction from the point of discovery or other well-defined place on the claim should be represented on the plat of survey and in the field notes.

(2) The intersection of the lines of the survey with the lines of conflicting prior surveys should be noted in the field notes and represented upon the plat.

(3) Conflicts with unsurveyed claims, where the applicant for survey does not claim the area in conflict, should be shown by actual survey.

(4) The total area of the claim embraced by the exterior boundaries should be stated, and also the area in conflict with each intersecting survey, substantially as follows:

	Acres
Total area of claim	10.50
Area in conflict with survey No. 302	1.56
Area in conflict with survey No. 948	2.33
Area in conflict with Mountain Maid lode mining claim, unsurveyed	1.48

(b) It does not follow that because mining surveys are required to exhibit all conflicts with prior surveys the area of conflict with prior surveys the area of conflict are to be excluded. The field notes and plat are made a part of the application for patent, and care should be taken that the description does not inadvertently exclude portions intended to be retained. The application for patent should state the portions to be excluded in express terms.

§ 3861.2-2 Certificate of expenditures and improvements.

(a) The claimant at the time of filing the application for patent, or at any time within the 60 days of publication, is required to file with the authorized officer a certificate of the office cadastral engineer that not less than $500 worth of labor has been expended or improvements made, by the applicant or his grantors, upon each location embraced in the application, or if the application embraces several contiguous locations held in common, that an amount equal to $500 for each location has been so expended upon, and for the benefit of, the entire group; that the plat filed by the claimant is correct; that the field notes of the survey, as filed, furnish such an accurate description of the claim as will, if incorporation in a patent, serve to identify the premises fully, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the locus thereof.

(b) In case of a lode and mill-site claim in the same survey the expenditure of $500 must be shown upon the lode claim.

§ 3861.2-3 Mineral surveyor's report of expenditures and improvements.

(a) In the mineral surveyor's report of the value of the improvements all actual expenditures and mining improvements made by the claimant or his grantors, having a direct relation to the development of the claim, must be included in the estimate.

(b) The expenditures required may be made from the surface or in running a tunnel, drifts, or crosscuts for the development of the claim. Expenditures for drill holes for the purpose of prospecting and securing data upon which further development of a group of lode mining claims held in common may be based are available toward meeting the statutory provision requiring an expenditure of $500 as a basis for patent as to all of the claims of the group situated in close proximity to such common improvement. Improvements of any other character, such as buildings, machinery, or roadways, must be excluded from the estimate, unless it is shown clearly that they are associated with actual excavations, such as cuts, tunnels, shafts, etc., are essential to the practical development of and actually facilitate the extraction of mineral from the claim.

(c) Improvements made by a former locator who has abandoned his claim cannot be included in the estimate, but should be described and located in the notes and plat.

§ 3861.2-4 Supplemental proof of expenditures and improvements.

If the value of the labor and improvements upon a mineral claim is less than $500 at the time of survey the mineral surveyor may file with the cadastral engineer supplemental proof showing $500 expenditure made prior to the expiration of the period of publication.

§ 3861.2-5 Amended mineral surveys.

(a) Inasmuch as amended surveys are ordered only by special instructions from the Bureau of Land Management, and the conditions and circumstances peculiar to each separate case and the object sought by the required amendment, alone govern all special matters relative to the manner of making such survey and the form and subject matter to be embraced in the field notes thereof, but few general rules applicable to all cases can be laid down.

(b) The expense of amended surveys, including amendment of plat and field notes, and office work in the Bureau of Land Management office will be borne by the claimant.

(c) The amended survey must be made in strict conformity with, or be embraced within, the lines of the original survey. If the amended and original surveys are identical, that fact must be clearly and distinctly stated in the field notes. If not identical, a bearing and distance must be given from each established corner of the amended survey to the corresponding corner of the original survey. The lines of the original survey, as found upon the ground, must be laid down upon the preliminary plat in such manner as to contrast and show their relation to the lines of the amended survey.

§ 3861.3 Mineral surveyors.

§ 3861.3-1 Extent of duties.

The duty of a mineral surveyor in any particular case ceases when he has executed the survey and returned the field notes and preliminary plat, with his report, to the cadastral engineer. He will not be allowed to prepare for the mining claimant the papers in support of his application for patent. He is not permitted to combine the duties of surveyor and notary public in the same case by administering oaths. It is preferable that both preliminary and final oaths of assistants should be taken before some officer duly authorized to administer oaths, other than the mineral surveyor. In cases, however, where great delay, expense, or inconvenience would result from a strict compliance with this section, the mineral surveyor is authorized to administer the necessary oaths to his assistants, but in each case where this is done, he will submit to the proper cadastral engineer a full written report of the circumstances which required his stated action; otherwise he must have absolutely nothing to do with the case, except in his official capacity as surveyor. He will not employ field assistants interested therein in any manner.

§ 3861.3-2 Assistants.

The employing of claimants, their attorneys, or parties in interest, as assistants in making surveys of mineral claims will not be allowed.

§ 3861.4 Contract for surveys.

§ 3861.4-1 Payment.

(a) The claimant is required, in all cases, to make satisfactory arrangements with the surveyor for the payment for his services and those of his assistants in making the survey, as the United States will not be held responsible for the same.

(b) The state director has no jurisdiction to settle differences relative to the payment of charges for field work, between mineral surveyors and claimants. These are matters of private contract and must be enforced in the ordinary manner, i.e., in the local courts. The Department has, however, authority to investigate charges affecting the official actions of mineral surveyors, and will, on sufficient cause shown, suspend or revoke their appointment.

§ 3861.5 Appointment and employment of mineral surveyors.

§ 3861.5-1 Appointment.

Pursuant to section 2334 of the Revised Statutes (30 U.S.C. 39), the Director or his delegate will appoint only a sufficient number of surveyors for the survey of mining claims to meet the demand for that class of work. Each appointee shall qualify as prescribed by the Director or his delegate. Applications for appointment as a mineral surveyor may be made at any office of the Bureau of Land Management listed in § 1821.2-1 of these regulations. A roster of appointed mineral surveyors will be available at these offices. Each appointee may execute mineral surveys in any State where mineral surveys are authorized.

[38 FR 30001, Oct. 31, 1973]

§ 3861.5-2 Employment.

A mineral claimant may employ any United States mineral surveyor qualified as indicated in paragraph (a) of this section to make the survey of his claim. All expenses of the survey of mining claims and the publication of the required notices of application for patent are to be borne by the mining claimants.

§ 3861.6 Plats and notices.

§ 3861.6-1 Payment of charges of the public survey office.

With regard to the platting of the claim and other office work in the Bureau of Land Management office, including the preparation of the copies of the plat and field notes to be furnished the claimant, that office will make an estimate of the cost thereof, which amount the claimant will deposit with it to be passed to the credit of the fund created by "Deposits by Individuals for Surveying Public Lands."

§ 3861.7 Posting.

§ 3861.7-1 Plat and notice to be posted on claim.

The claimant is required to post a copy of the plat of survey in a conspicuous place upon the claim, together with notice of his intention to apply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, the number of the survey, the mining district and county, and the names of adjoining and conflicting claims as shown by the plat of survey.

§ 3861.7-2 Proof of posting on the claim.

After posting the said plat and notice upon the premises the claimant will file with the proper manager two copies of such plat and the field notes of survey of the claim, accompanied by two copies of the statement of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting, and two copies of the notice so posted to be attached to and form a part of said statement.

Subpart 3862—Lode Mining Claim Patent Applications

SOURCE: 35 FR 9756, June 13, 1970, unless otherwise noted.

§ 3862.1 Lode claim patent application; general.

§ 3862.1-1 Application for patent.

(a) At the time the proof of posting is filed the claimant must file in duplicate an application for patent showing that he has the possessory right to the claim, in virtue of a compliance by himself (and by his grantors, if he claims by purchase) with the mining rules, regulations, and customs of the mining district or State in which the claim lies, and with the mining laws of Congress, such statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin of his possession, and the basis of his claim to a patent. The application should contain a full description of the kind and character of the vein or lode and should state whether ore has been extracted therefrom; and if so, in what amount and of what value. It should also show the precise place within the limits of each of the locations embraced in the application where the vein or lode has been exposed or discovered and the width thereof. The showing in these regards should contain sufficient data to enable representatives of the Government to confirm the same by examination in the field and also enable the Bureau of Land Management to determine whether a valuable deposit of mineral actually exists within the limits of each of the locations embraced in the application.

(b) Every application for patent, based on a mining claim located after August 1, 1946, shall state whether the claimant has or has not had any direct or indirect part in the development of the atomic bomb project. The application must set forth in detail the exact nature of the claimant's participation in the project, and must also state whether as a result of such participation he acquired any confidential, official information as to the existence of deposits of uranium, thorium, or other fissionable source materials in the lands covered by his application.

(c) In applying for patent to a mining claim embracing land lying partly within one proper office and partly within another, a full set of papers must be filed in each office, except that one abstract of title and one proof of patent expenditures will be sufficient. Only one newspaper publication and one posting on the claim will be required, but proof thereof must be filed in both offices, the statements as to posting plat and notice on the claim to be signed within the respective land districts, as well, also, as all of the other statements required in mineral patent proceedings, except such as, under the law, may be signed outside of the land district wherein the land applied for is situated. Publication, payment of fees, and the purchase price of the land will be further governed by the provisions of § 1823.4(a) and § 1861.2 of this chapter.

§ 3862.1-2 Service charge.

The service charge payable to the Bureau of Land Management for filing and acting upon applications for mineral-land patents is $25 to be paid by the applicant for patent at the time of filing. This charge is not refundable.

§ 3862.1-3 Evidence of title.

(a) Each patent application must be supported by either a certificate of title or an abstract of title certified to by the legal custodian of the records of locations and transfers of mining claims or by an abstracter of titles. The certificate of title or certificate to an abstract of title must be by a person, association, or corporation authorized by the State laws to execute such a certificate and acceptable to the Bureau of Land Management.

(b) A certificate of title must conform substantially to a form approved by the Director.

(c) Each certificate of title or abstract of title must be accompanied by single copies of the certificate or notice of the original location of each claim, and of the certificates of amended or supplemental locations thereof, certified to by the legal custodian of the record of mining locations.

(d) A certificate to an abstract of title must state that the abstract is a full, true, and complete abstract of the location certificates or notices, and all amendments thereof, and of all deeds, instruments, or actions appearing of record purporting to convey or to affect the title to each claim.

(e) The application for patent will be received and filed if the certificate of title or an abstract is brought down to a day reasonably near the date of the presentation of the application and shows full title in the applicant, who must as soon as practicable thereafter file a supplemental certificate of title or an abstract brought down so as to include the date of the filing of the application.

§ 3862.1-4 Evidence relating to destroyed or lost records.

In the event of the mining records in any case having been destroyed by fire or otherwise lost, a statement of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the statement of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, etc.; and in such case of lost records, any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession and tend to establish his claim, should be filed.

§ 3862.1-5 Statement required that land is unreserved, unoccupied, unimproved, and unappropriated.

Each person making application for patent under the mining laws, for lands in Alaska, must furnish a duly corroborated statement showing that no portion of the land applied for is occupied or reserved by the United States, so as to prevent its acquisition under said laws; that the land is not occupied or claimed by natives of Alaska; and that the land is unoccupied, unimproved and unappropriated by any person claiming the same other than the applicant.

§ 3862.2 Citizenship.

§ 3862.2-1 Citizenship of corporations and of associations acting through agents.

The proof necessary to establish the citizenship of applicants for mining patents must be made in the following manner: In case of an incorporated company, a certified copy of its charter or certificate of incorporation must be filed. In case of an association of persons unincorporated, the statement of their duly authorized agent, made upon his own knowledge or upon information and belief, setting forth the residence of each person forming such association, must be submitted. This statement must be accompanied by a power of attorney from the parties forming such association, authorizing the person who makes the citizenship showing to act for them in the matter of their application of patent.

§ 3862.2-2 Citizenship of individuals.

(a) In case of an individual or an association of individuals who do not appear by their duly authorized agent, the statement of each applicant, showing whether he is a native or naturalized citizen, when and where born, and his residence, will be required.

(b) In case an applicant has declared his intention to become a citizen or has been naturalized, his statement must show the date, place, and the court before which he declared his intention, or from which his certificate of citizenship issued, and present residence.

§ 3862.2-3 Trustee to disclose nature of trust.

Any party applying for patent as trustee must disclose fully the nature of the trust and the name of the cestui que trust; and such trustee, as well as the beneficiaries, must furnish satisfactory proof of citizenship; and the names of beneficiaries, as well as that of the trustee, must be inserted in the final certificate of entry.

§ 3862.3 Possessory rights.

§ 3862.3-1 Right by occupancy.

(a) The provisions of R.S. 2332 (30 U.S.C. 38), greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire, or lost in other ways during the lapse of time, but concerning the possessory right to which all controversy or litigation has long been settled.

(b) When an applicant desires to make his proof of possessory right in accordance with this provision of law, he will not be required to produce evidence of location, copies of conveyances, or abstracts of title, as in other cases, but will be required to furnish a duly certified copy of the statute of limitation of mining claims for the State, together with his statement giving a clear and succinct narration of the facts as to the origin of his title, and likewise as to the continuation of his possession of the mining ground covered by his application; the area thereof; the nature and extent of the mining that has been done thereon; whether there has been any opposition to his possession, or litigation with regard to his claim, and if so, when the same ceased; whether such cessation was caused by compromise or by judicial decree, and any additional facts within the claimant's knowledge having a direct bearing upon his possession and bona fides which he may desire to submit in support of his claim.

§ 3862.3-2 Certificate of court required.

There should likewise be filed a certificate, under seal of the court having jurisdiction of mining cases within the judicial district embracing the claim, that no suit or action of any character whatever involving the right of possession to any portion of the claim applied for is pending, and that there has been no litigation before said court affecting the title to said claim or any part thereof for a period equal to the time fixed by the statute of limitations for mining claims in the State as aforesaid other than that which has been finally decided in favor of the claimant.

§ 3862.3-3 Corroborative proof required.

The claimant should support his narrative of facts relative to his possession, occupancy, and improvements by corroborative testimony of any disinterested person or persons of credibility who may be cognizant of the facts in the case and are capable of testifying understandingly in the premises.

§ 3862.4 Publication of notice.

§ 3862.4-1 Newspaper publication.

Upon the receipt of applications for mineral patent and accompanying papers, if no reason appears for rejecting the application, the authorized officer will, at the expense of the claimant (who must furnish the agreement of the publisher to hold applicant for patent alone responsible for charges of publication), publish a notice of such application for the period of 60 days in a newspaper published nearest to the claim. If the notice is published in a daily paper, it shall be published in the Wednesday issue for nine consecutive weeks; if weekly, in nine consecutive issues; if semiweekly or triweekly, in the issue of the same day of each week for nine consecutive weeks. In all cases the first day of issues shall be excluded in estimating the period of 60 days.

[35 FR 9756, June 13, 1970, as amended at 41 FR 21642, May 27, 1976]

§ 3862.4-2 Contents of published notice.

The notices published as required by the preceding section must embrace all the data given in the notice posted upon the claim. In addition to such data the published notice must further indicate the locus of the claim by giving the connecting line, as shown by the field notes and plat, between a corner of the claim and a United States mineral monument or a corner of the public survey, and thence the boundaries of the claim by courses and distances.

§ 3862.4-3 Authorized officer to designate newspaper.

The authorized officer shall have the notice of application for patent published in a paper of established character and general circulation, to be by him designated as being the newspaper published nearest the land.

§ 3862.4-4 Charges for publication.

(a) The charge for the publication of notice of application for patent in a mining case in all districts shall not exceed the legal rates allowed by the laws of the several States for the publication of legal notices wherein the notice is published.

(b) It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and on the other hand that they shall not be of unnecessary length. The printed matter must be set solid without paragraphing or any display in the heading and shall be in the usual body type used in legal notices. If other type is used, no allowance will be made for additional space on that account. The number of solid lines only used in advertising by actual count will be allowed. All abbreviations and copy must be strictly followed. The following is a sample of advertisement set up in accordance with Government requirements and contains all the essential data necessary for publication:

M. A. No. 04421, U. S. Land Office, Elko, Nevada, October 5, 1921. Notice is hereby given that the Jarbidge Buhl Mining Company by W. H. Hudson, attorney in fact, of Jarbidge, Nevada, has made application for patent to the Altitude, Altitude No. 1, Altitude No. 3, and Altitude Annex, lode mining claims. Survey No. 4470, in unsurveyed T. 46 N., R. 58 E., M. D. B. and M., in the Jarbidge mining district, Elko County, Nevada, described as follows: Beginning at corner No. 1, Altitude No. 3, whence the quarter corner of the south boundary of sec. 34 T. 46 N., R. 58 E., M. D. B. and M., bears south 41°54′ west 7285.63 feet, thence north 20°14′ west 1500 feet to corner No. 2 of said lode; thence north 69°46′ east 569 feet to corner No. 3 of said lode; thence south 20°14′ east 417.5 feet to corner 2, Altitude No. 1; thence north 69°46′ east 1606.1 feet to corner No. 3, Altitude lode; thence south 20°14′ east 1500 feet, to corner No. 4 of said lode; thence south 69°46′ west 1606.1 feet, to corner No. 1, Altitude No. 1 lode; thence North 20°14′ west 417.5 feet to corner No. 4, Altitude No. 3; thence south 69°46′ west 569 feet to point of beginning. There are no adjoining or conflicting claims. The location notices are recorded in Book 17, pages 373 and 374, and in Book 15, pages 52 and 53, mining locations, Elko County, Nevada, John E. Robbins, Manager.

(c) For the publication of citations in contests or hearings, involving the character of lands, the charges may not exceed the rates provided for similar notices by the law of the State.

§ 3862.4-5 Proof by applicant of publication and posting.

After the 60-day period of newspaper publication has expired, the claimant will furnish from the office of publication a sworn statement that the notice was published for the statutory period, giving the first and last day of such publication, and his own statement showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said 60-day publication, giving the dates.

§ 3862.4-6 Payment of purchase price and statement of charges and fees.

Upon the filing of the statement required by the preceding section, the authorized officer will, if no adverse claim was filed in his office during the period of publication, and no other objection appears, permit the claimant to pay for the land to which he is entitled at the rate of $5 for each acre and $5 for each fractional part of an acre, except as otherwise provided by law, issuing the usual receipt therefor. The claimant will also make a statement of all charges and fees paid by him for publication and surveys, together with all fees and money paid the authorized officer of the proper office, and a patent shall be issued thereon if found regular.

§ 3862.5 Entry and transfers.

§ 3862.5-1 Allowance of entry; transfers subsequent to application not recognized.

No entry will be allowed until the authorized officer has satisfied himself, by careful examination, that proper proofs have been filed upon the points indicated in the law and official regulations. Transfers made subsequent to the filing of the application for patent will not be considered, but entry will be allowed and patent issued in all cases in the name of the applicant for patent, the title conveyed by the patent, of course, in each instance inuring to the transferee of such applicant where a transfer has been made pending the application for patent.

§ 3862.6 Diligent prosecution.

§ 3862.6-1 Failure to prosecute application with diligence.

The failure of an applicant for patent to a mining claim to prosecute his application to completion, by filing the necessary proofs and making payment for the land, within a reasonable time after the expiration of the period of publication of notice of the application, or after the termination of adverse proceedings in the courts, constitutes a waiver by the applicant of all rights obtained by the earlier proceedings upon the application.

§ 3862.7 Application processing upon contest or protest.

§ 3862.7-1 Resumption of patent proceedings after suspension due to adverse claim or protest.

The proceedings necessary to the completion of an application for patent to a mining claim, against which an adverse claim or protest has been filed, if taken by the applicant at the first opportunity afforded therefor under the law and departmental practice, will be as effective as if taken at the date when, but for the adverse claim or protest, the proceedings on the application could have been completed.

§ 3862.8 Patents for mining claims.

§ 3862.8-1 Land descriptions in patents.

The land description in a patent for a lode mining claim, for a millsite, or for a placer claim not consisting of legal subdivisions, shall hereafter consist of the names and survey numbers of the claims being patented and those being excluded, or of the names of the excluded claims if they are unsurveyed, or of the legal subdivisions of excluded land covered by homestead or other nonmineral entry. The land description shall refer to the field notes of survey and the plat thereof for a more particular description and the patent shall expressly make them a part thereof. Where shown by the mineral entry the patent shall give the actual or approximate legal subdivision, section, township and range, the name of the county and of the mining district, if any, wherein the claims are situated. A copy of the plat and field notes of each mineral survey patented will be furnished to the patentee.

Subpart 3863—Placer Mining Claim Patent Applications

SOURCE: 35 FR 9758, June 13, 1970, unless otherwise noted.

§ 3863.1 Placer mining claim patent applications: general.

(a) The proceedings to obtain patents for placer claims, including all forms of mineral deposits excepting veins of quartz or other rock in place, are similar to the proceedings prescribed for obtaining patents for vein or lode claims; but where a placer claim shall be upon surveyed lands, and conforms to legal subdivisions, no further survey or plat will be required. Where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands.

(b) The price of placer claims is fixed at $2.50 per acre or fractional part of an acre.

§ 3863.1-1 Application for patent.

§ 3863.1-2 Proof of improvements for patent.

The proof of improvements must show their value to be not less than $500 and that they were made by the applicant for patent or his grantors. This proof should consist of the statement of two or more disinterested witnesses.

§ 3863.1-3 Data to be filed in support of application.

(a) In placer applications, in addition to the recitals necessary in and to both vein or lode and placer applications, the placer application should contain, in detail, such data as will support the claim that the land applied for is placer ground containing valuable mineral deposits not in vein or lode formation and that title is sought not to control water courses or to obtain valuable timber but in good faith because of the mineral therein. This statement, of course, must depend upon the character of the deposit and the natural features of the ground, but the following details should be covered as fully as possible: If the claim be for a deposit of placer gold, there must be stated the yield per pan, or cubic yard, as shown by prospecting and development work, distance to bedrock, formation and extent of the deposit, and all other facts upon which he bases his allegation that the claim is valuable for its deposits of placer gold. If it be a building stone or other deposit than gold claimed under the placer laws, he must describe fully the kind, nature, and extent of the deposit, stating the reasons why same is by him regarded as a valuable mineral claim. He will also be required to describe fully the natural features of the claim; streams, if any, must be fully described as to their course, amount of water carried, fall within the claim; and he must state kind and amount of timber and other vegetation thereon and adaptability to mining or other uses.

(b) If the claim be all placer ground, that fact must be stated in the application and corroborated by accompanying proofs; if of mixed placers and lodes, it should be so set out, with a description of all known lodes situated within the boundaries of the claim. A specific declaration, such as is required by R.S. 2333 (30 U.S.C. 37) must be furnished as to each lode intended to be claimed. All other known lodes are, by the silence of the applicant, excluded by law from all claim by him, of whatsoever nature, possessory or otherwise.

(c) While these data are required as a part of the mineral surveyor's report in case of placers taken by special survey, it is proper that the application for patent incorporate these facts.

(d) Inasmuch as in case of claims taken by legal subdivisions, no report by a mineral surveyor is required, the claimant, in his application in addition to the data above required, should describe in detail the shafts, cuts, tunnels, or other workings claimed as improvements, giving their dimensions, value, and the course and distance thereof to the nearest corner of the public surveys.

(e) The statement as to the description and value of the improvements must be corroborated by the statements of two disinterested witnesses. The proof showing must be made in duplicate. See 51 L.D. 265 and 52 L.D. 190.

(f) Applications awaiting entry, whether published or not, must be made to conform to this part, with respect to proof as to the character of the land Entries already made will be suspended for such additional proofs as may be deemed necessary in each case.

§ 3863.1-1 Applications for placers containing known lodes.

Applicants for patent to a placer claim, who are also in possession of a known vein or lode included therein, must state in their application that the placer includes such vein or lode. The published and posted notices must also include such statement. If veins or lodes lying within placer locations are owned by other parties, the fact should be distinctly stated in the application for patent and in all the notices. But in all cases whether the lode is claimed or excluded, it must be surveyed and marked upon the plat, the field notes and plat giving the area of the lode claim or claims and the area of the placer separately. An application which omits to claim such known vein or lode must be construed as a conclusive declaration that the applicant has no right of possession to the vein or lode. Where there is no known lode or vein, the fact must appear by the statement of two or more witnessess.

Subpart 3864—Millsite Patents

SOURCE: 35 FR 9758, June 13, 1970, unless otherwise noted.

§ 3864.1 Millsite patents; general.

§ 3864.1-1 Application for patent.

(a) Land entered as a millsite must be shown to be nonmineral. Millsites are simply auxiliary to the working of mineral claims. R.S. 2337 (30 U.S.C. 42) provides for the patenting of millsites.

(b) To avail themselves of this provision of law, parties holding the possessory right to a vein or lode claim, and to a piece of nonmineral land not contiguous thereto for mining or milling purposes, not exceeding the quantity allowed for such purpose by R.S. 2337, or prior laws, under which the land was appropriated, the proprietors of such vein or lode may file in the proper office their application for a patent, which application, together with the plat and field notes, may include, embrace, and describe, in addition to the vein or lode claim, such noncontiguous millsite, and after due proceedings as to notice, etc., a patent will be issued conveying the same as one claim. The owner of a patented lode may, by an independent application, secure a millsite, if good faith is manifest in its use or occupation in connection with the lode and no adverse claim exists.

(c) The Act of March 18, 1960 (74 Stat. 7; 43 U.S.C. 42(b)), amends R.S. 2337 to allow the holders of possessory right in a placer claim to hold nonmineral land for mining, milling, processing beneficiation, or other operations in connection with the placer claim. Applications for patent for such millsites are subject to the same requirements as to survey and notice as one applicable to placer mining claims. No one millsite may exceed five acres and payment will be $2.50 per acre or fraction thereof.

§ 3864.1-2 Millsites applied for in conjunction with a lode claim.

Where the original survey includes a lode claim and also a millsite the lode claim should be described in the plat and field notes as "Sur. No. 37, A," and the millsite as "Sur. No. 37, B," or whatever may be its appropriate numerical designation; the course and distance from a corner of the millsite to a corner of the lode claim to be invariably given in such plat and field notes, and a copy of the plat and notice of application for patent must be conspicuously posted upon the millsite as well as upon the vein or lode claim for the statutory period of 60 days. In making the entry no separate receipt or certificate need be issued for the millsite, but the whole area of both lode and millsite will be embraced in one entry, the price being $5 for each acre and fractional part of an acre embraced by such lode and millsite claim.

§ 3864.1-3 Millsites for quartz mills or reduction works.

In case the owner of a quartz mill or reduction works is not the owner or claimant of a vein or lode claim the law permits him to make application therefor in the same manner prescribed for mining claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his millsite at the price named in the preceding section.

§ 3864.1-4 Proof of nonmineral character.

In every case there must be satisfactory proof that the land claimed as a millsite is not mineral in character, which proof may, where the matter is unquestioned, consist of the statement of two or more persons capable, from acquaintance with the land to testify understandingly.

PART 3870—ADVERSE CLAIMS, PROTESTS AND CONFLICTS

Subpart 3871—Adverse Claims

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3871.2 Statement of claim.
3871.3 Action by authorized officer.
3871.4 Patent proceedings stayed when adverse claim is filed; exception.
3871.5 Termination of adverse suit.
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Subpart 3872—Protests, Contests and Conflicts

3872.1 Protest against mineral applications.
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Subpart 3873—Segregation

Sec.
3873.1 Segregation of mineral from nonmineral land.
3873.2 Effect of decision that land is mineral.
3873.3 Non-mineral entry of residue of subdivisions invaded by mining claims.

Subpart 3871—Adverse Claims

SOURCE: 35 FR 9759, June 13, 1970, unless otherwise noted.

§ 3871.1 Filing of claim.

(a) An adverse claim must be filed with the authorized officer of the proper office where the application for patent is filed or with the manager of the district in which the land is situated at the time of filing the adverse claim. The claim may be filed by the adverse claimant, or by his duly authorized agent or attorney in fact cognizant of the facts stated.

(b) Where an agent or attorney in fact files the adverse claim he must furnish proof that he is such agent or attorney.

(c) The agent or attorney in fact must sign the statement of the adverse claim within the land district where the claim is situated, stating that it was so signed.

(d) A fee of $10 is payable by an adverse claimant at the time of filing his adverse claim. This charge is not refundable.

§ 3871.2 Statement of claim.

(a) The adverse claim must fully set forth the nature and extent of the interference or conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator. If the former, a certified copy of the original location, the original conveyance, a duly certified copy thereof, or an abstract of title from the office of the proper recorder should be furnished, or if the transaction was a merely verbal one he will narrate the circumstances attending the purchase, the date thereof, and the amount paid, which facts should be supported by the statement of one or more witnesses, if any were present at the time, and if he claims as a locator he must file a duly certified copy of the location from the office of the proper recorder.

(b) In order that the "boundaries" and "extent" of the claim may be shown, it will be incumbent upon the adverse claimant to file a plat showing his entire claim, its relative situation or position with the one against which he claims, and the extent of the conflict: *Provided, however,* That if the application for patent describes the claim by legal subdivisions, the adverse claimant, if also claiming by legal subdivisions, may describe his adverse claim in the same manner without further survey or plat. If the claim is not described by legal subdivisions it will generally be more satisfactory if the plat thereof is made from an actual survey by a mineral surveyor and its correctness officially certified thereon by him.

§ 3871.3 Action by authorized officer.

(a) Upon the adverse claim being filed within the 60-day period of publication, the authorized officer will immediately give notice in writing to the parties that such adverse claim has been filed, informing them that the party who filed the adverse claim will be required within 30 days from the date of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment, and that should such adverse claimant fail to do so, his adverse claim will be considered waived and the application for patent be allowed to proceed upon its merits.

(b) The Act of September 21, 1961 (Pub. L. 87-260; 75 Stat. 541), amends the Act of June 7, 1910 (36 Stat. 459; 48 U.S.C. 386), and provides that adverse suits against mineral entries in Alaska shall be instituted within the 60-day time limit set forth in R.S. 2325 and 2326, (30 U.S.C. 29, 30). The act further provides that where a mineral patent application was filed prior to the effective date of the act, the time in which to file adverse suits is governed by the Act of June 7, 1910. Where a mineral patent application was filed prior to September 21, 1961, the entry will not be allowed until after the expiration of eight months following the publication period.

§ 3871.4 Patent proceedings stayed when adverse claim is filed; exception.

When an adverse claim is filed as aforesaid, the authorized officer will endorse upon the same the precise date of filing and preserve a record of the date of notifications issued thereon; and thereafter all proceedings on the application for patent will be stayed with the exception of the completion of the publication and posting of notices and plat and the filing of the necessary proof thereof, until the controversy shall have been finally adjudicated in court or the adverse claim waiver or withdrawn.

§ 3871.5 Termination of adverse suit.

(a) Where an adverse claim has been filed and suit thereon commenced within the statutory period and final judgment rendered determining the right of possession, it will not be sufficient to file with the authorized officer a certificate of the clerk of the court setting forth the facts as to such judgment, but the successful party must, before he is allowed to make entry, file a certified copy of the judgment roll, together with the other evidence required by R.S. 2326 (30 U.S.C. 30), and a certificate of the clerk of the court under the seal of the court showing, in accord with the record facts of the case, that the judgment mentioned and described in the judgment roll aforesaid is a final judgment; that the time for appeal therefrom has, under the law, expired, and that no such appeal has been filed, or that the defeated party has waived his right to appeal. Other evidence showing such waiver or an abandonment of the litigation may be filed.

(b) Where such suit has been dismissed, a certificate of the clerk of the court to that effect or a certified copy of the order of dismissal will be sufficient.

(c) After an adverse claim has been filed and suit commenced, a relinquishment or other evidence of abandonment of the adverse claim will not be accepted, but the case must be terminated and proof thereof furnished as required by the last two paragraphs.

§ 3871.6 Certificate required when no suit commenced.

Where an adverse claim has been filed but no suit commenced against the applicant for patent within the statutory period, a certificate to that effect by the clerk of the State court having jurisdiction in the case, and also by the clerk of the district court of the United States for the district in which the claim is situated, will be required.

Subpart 3872—Protests, Contests and Conflicts

SOURCE: 35 FR 9760, June 13, 1970, unless otherwise noted.

§ 3872.1 Protest against mineral applications.

(a) At any time prior to the issuance of patent, protest may be filed against the patenting of the claim as applied for, upon any ground tending to show that the applicant has failed to comply with the law in any matter essential to a valid entry under the patent proceedings. Such protest cannot, however, be made the means of preserving a surface conflict lost by failure to adverse or lost by the judgment of the court in an adverse suit. One holding a present joint interest in a mineral location included in an application for patent who is excluded from the application, so that his interest would not be protected by the issue of patent thereon, may protest against the issuance of a patent as applied for, setting forth in such protest the nature and extent of his interest in such location, and such a protestant will be deemed a party in interest entitled to appeal. This results from the holding that a co-owner excluded from an application for patent does not have an "adverse" claim within the meaning of R.S. 2325 and 2326 (30 U.S.C. 29, 30). (See Turner v. Sawyer, 150 U.S. 578-586, 37 L. ed. 1189-1191.)

(b) Such protest filed by any party, other than a Federal agency, must be accompanied by a $10 nonrefundable service charge.

§ 3872.2 Procedure in contest cases.

Parts 1840 and 1850 of this chapter, in cases before the United States, the Bureau of Land Management, and the Department of the Interior will, so far as applicable, govern in all cases and proceedings arising in contests and hearings to determine the character of lands.

§ 3872.3 Presumption as to land returned as mineral.

Public land returned upon the survey records as mineral shall be withheld from entry as agricultural land until the presumption arising from such a return shall be overcome.

§ 3872.4 Procedure to dispute record character of land.

(a) When lands returned as mineral are sought to be entered as agricultural under laws which require the submission of final proof after due notice by publication and posting, the filing of the proper nonmineral statement in the absence of allegations that the land is mineral will be deemed sufficient as a preliminary requirement. A satisfactory showing as to character of land must be made when final proof is submitted.

(b) In case of application to enter, locate, or select such lands as agricultural, under laws in which the submission of final proof after due publication and posting is not required, notice thereof must first be given by publication for 60 days and posting in the local office during the same period, and affirmative proof as to the character of the land submitted. In the absence of allegations that the land is mineral, and upon compliance with this requirement, the entry location, or selection will be allowed, if otherwise regular.

(c) Where as against the claimed right to enter such lands as agricultural it is alleged that the same are mineral, or are applied for as mineral lands, the proceedings in this class of cases will be in the nature of a contest, and the practice will be governed by the rules in force in contest cases.

§ 3872.5 Testimony at hearings to determine character of lands.

(a) At hearings to determine the character of lands the claimants and witnesses will be thoroughly examined with regard to the character of the land; whether the same has been thoroughly prospected; whether or not there exists within the tract or tracts claimed any lode or vein of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposit which has ever been claimed, located, recorded, or worked; whether such work is entirely abandoned, or whether occasionally resumed; if such lode does exist, by whom claimed, under what designation, and in which subdivision of the land it lies; whether any placer mine or mines exist upon the land; if so, what is the character thereof, whether of the shallow-surface description, or of the deep cement, blue lead, or gravel deposits; to what extent mining is carried on when water can be obtained, and what the facilities are for obtaining water for mining purposes; upon what particular 10-acre subdivisions mining has been done, and at what time the land was abandoned for mining purposes, if abandoned at all. In every case, where practicable, an adequate quantity or number of representative samples of the alleged mineral-bearing matter or material should be offered in evidence, with proper identification, to be considered in connection with the record, with which they will be transmitted upon each appeal that may be taken. Testimony may be submitted as to the geological formation and development of mineral on adjoining or adjacent lands and their relevancy.

(b) The testimony should also show the agricultural capacities of the land, what kind of crops are raised thereon, the value thereof; the number of acres actually cultivated for crops of cereals or vegetables, and within which particular 10-acre subdivision such crops are raised; also which of these subdivisions embrace the improvements, giving in detail the extent and value of the improvements, such as house, barn, vineyard, orchard, fencing, etc., and mining improvements.

(c) The testimony should be as full and complete as possible; and in addition to the leading points indicated above, where an attempt is made to prove the mineral character of lands which have been entered under the agricultural laws, it should show at what date, if at all, valuable deposits of minerals were first known to exist on the lands.

Subpart 3873—Segregation

Source: 35 FR 9760, June 13, 1970, unless otherwise noted.

§ 3873.1 Segregation of mineral from non-mineral land.

Where a survey is necessary to set apart mineral from non-mineral land the appropriate authorized officer will have special instructions prepared outlining the procedure to be followed in the required survey. The survey will be executed at the expense of the United States. Where, in stock-raising homestead entries, it has been satisfactorily established that there are existent prior unpatented mining claims, the segregation of the latter is not strictly a segregation of mineral from non-mineral land, but rather the procedure adopted to define the boundaries of and provide a legal description for that part of the homestead entry which is not within the segregated mining claims.

§ 3873.2 Effect of decision that land is mineral.

The fact that a certain tract of land is decided upon testimony to the mineral in character is by no means equivalent to an award of the land to a miner. In order to secure a patent for such land, he must proceed as in other cases, in accordance with this part.

§ 3873.3 Non-mineral entry of residue of subdivisions invaded by mining claims.

(a) The authorized officer will accept and approve any application (if otherwise regular), to make a non-mineral entry of the residue of any original lot or legal subdivision which is invaded by mining claims if the tract has already been lotted to exclude such claims. If not so lotted, and if the original lot or legal subdivision is invaded by patented mining claims, or by mining claims covered by pending applications for patent which the non-mineral applicant does not desire to contest, or by approved mining claims of established mineral character, the authorized officer will accept and approve the application (if otherwise regular), exclusive of the conflict with the mining claims.

(b) The authorized officer will allow no non-mineral application for any portion of an original lot or 40-acre legal subdivision, where the tract has not been lotted to show the reduced area by reason of approved surveys of mining claims for which applications for patent have not been filed, until the non-mineral applicant submits a satisfactory showing that such surveyed claims are in fact mineral in character. Applications to have lands which are asserted to be mineral, or mining locations, segregated by survey with a view to the non-mineral appropriation of the remainder, will be made to the authorized officer of the proper office. Such applications must be supported by a written statement of the party in interest, duly corroborated by two or more disinterested persons, or by such other or further evidence as may be required, that the land sought to be segregated as mineral is in fact mineral in character.

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NOTE: Symbol (†) refers to 1981 page numbers.

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Removal effective date deferred and request for comments	†19234
Removal effective date confirmed	†22586
2320 Removed	†5805
Removal effective date deferred	†10707
Removal effective date deferred and request for comments	†19234
Removal effective date confirmed	†22586
2340 Removed	†5805
Removal effective date deferred	†10707
Removal effective date deferred and request for comments	†19234
Removal effective date confirmed	†22586
2350 Removed	†5805
Removal effective date deferred	†10707
Removal effective date deferred and request for comments	†19234
Removal effective date confirmed	†22586
2621.1 Removed; new 2621.1 redesignated from 2621.2	†24135
(d)(2) and (e) removed; (d) (3), (4), and (5) redesignated as (d) (2), (3) and (4); new (d)(2) revised	†24135
2621.2 Redesignated as 2621.1; new 2621.2 redesignated from 2621.3	†24135
2621.3 Redesignated as 2621.2; new 2621.3 redesignated from 2621.4	†24135
2621.4 Redesignated as 2621.3; new 2621.4 redesignated from 2621.5	†24135
2621.5 Redesignated as 2621.4	†24135

NOTE: Symbol (†) refers to 1981 page numbers.

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2655.0-3—2655.4 (Subpart 2655) Added	70206
2712.0-3—2712.1 (Subpart 2712) Added; interim; eff. 9-29-81 to 12-31-81	†44677
2920 Revised	†5777
Effective date deferred	†10707
Effective date deferred and request for comments	†19234
Effective date confirmed	†22586
3100 Technical corrections	†46810
3102.1-1 Correctly removed	72163
3102.1-2 Correctly removed	72163
3103.1-3 Amended; interim	†45887
3103.2-1 (a) amended; interim	†45887
3110 Partial suspension removed	†37250
Technical corrections	†46810
3111.1-3 (a) amended; interim	†45887
3112.2-2 (a) amended; interim	45887
3316.3-2 (a) revised	69174
3316.3-4 (b), (c)(4), and (d) revised	69175
3316.4 (h)(2) revised	69175
3317.1 (a) and (b) revised; (e) added	69175
3340.0-2 Second paragraph removed	77438
3340.0-4 Added	77438
3340.1 (a)(11) revised	69175
3340.2-1 (e)(1) revised	77438
3611.4 Added	77438
3809.0-1—3809.6 (Subpart 3809) Added	78909
3809.0-5 (a) corrected	82934
3809.1-3 (b), (c)(4), and (f) corrected	82934
3809.1-4 (a) corrected	82934
3809.1-5 (c)(5) corrected	82934
3809.1-6 (b) and (e) corrected	82934
3809.1-8 (a) introductory text, (1), and (2) corrected	82934
3809.1-9 (a), (b), (e) and (g) corrected	82934
3809.2-1 (b) and (c) corrected	82934
3809.2-2 Introductory text and (c) corrected	82934
3809.3-1 (a) corrected	82934
3809.3-2 (a), (b), (c), and (e) corrected	82934